

EXHIBITION *AD DELIBERANDUM.*

S E C T. I.

Competent to all sorts of heirs.

1588. *December.* PITCAIRN *against* MURRAY.

THERE was the dochters of umquhile Henry Pitcairn, appearant of Forfar, that perseuit Euphan Murray, Lady Rossyth, and spouse to umquhile Robert Commendator of Dumfermline, for exhibition and deliverance of ane reversion made by Mr John Pitcairn of Kirk Forfar to his brother-german the said umquhile Mr Robert, and they qualified their interest as nearest and appearant heirs of conquest to the said umquhile Mr Robert. It was *alleged* be Mr John Pitcairn, maker of the said reversion, that they could have no action against him as appearant heir of conquest, because they were not servit aires, nor yet shew any thing that they were aires of conquest, for there might be bastardie objectit against them, and against the said Mr John, who was nearest heir of line, they could have no process except they show something that they were declarit aires of conquest. To this was *answered, quoad in hac actione ad exhibendum*, and for deliverance of evidents, it was sufficient to allege that nakedlie they were aires of conquest, whereof the daily practick an appearant heir of line or conquest may perseu for exhibition and deliverance of evidents to the effect he may be servit heir. THE LORDS found, that they needit not to show where he was heir of conquest, but it was sufficient to name himself in the summons, heir of conquest.

Into the foresaid action betwixt heirs of umquhile Henry Pitcairn appearant of Kirk Forfar, and dame Euphan Murray, Lady Rossyth, and Mr John Pitcairn of Forfar, for his interest, anent the deliverance of the reversion of the lands of ——— and other lands specified in the said reversion, it was *allegit* be Mr John, that the said reversion could naways appertain to the dochters of Henry, be reason of conquest, because the law and right whereupon they might

No 1.

An heir apparent of conquest may pursue exhibition *ad deliberandum.*

No 1. found the conquest, was of the law of the books of majesty, where it is treatit of the nature of conquest, the whilk were only meant as the express words of the same buir of them *qui habentes terras sive tenementa*, and so could not be extended to writs, such as obligations, contracts, and reversions. To the quhilk it was *answered*, that reversions being heritable, behoved to be ruled according to the nature of the infestments, whilk are heritable titles, and as it was practised of before betwixt the executors of Mr Andrew Herriot and the executors of John Fairlie, in the whilk decision it was fund that the law of conquest aught to have place in sicklike titles, and might be extended to heritable contracts, bonds, and obligations, and where any thing was destinat to any heritable use. THE LORDS, after long reasoning, found that the said reversion aught to be repute and holden as conquest, and so the airs of conquest had good action to purseu for deliverance of the same, as appertaining to them be reason of conquest. *Nonnulli in contraria fuerunt opinione.*

Fol. Dic. v. I. p. 283. Colvil, MS. p. 433.

1626. July 1.

NISBET against WHITELAW.

No 2.
Exhibition ad
deliberandum
may be pur-
sued after the
annus delibe-
randi.

ONE Whitelaw, being pursued at the instance of Mr Patrick Nisbet and his bairns begotten upon his wife, daughter to Mr John Arthur, for exhibition of certain writs and bonds, pertaining to the said Mr John, and which they desired to be produced and delivered to them, to the effect that they might advise and deliberate, if they would enter heirs to their said umquhile grand-father, or not; in this pursuit the defenders compearing, *alleged*, that this pursuit, for delivery of evidents to the pursuer, to the effect she might advise, if she would enter heir, ought not to be sustained, because albeit an apparent heir might call for production of writs, yet the delivery thereof, or decret being given for delivery, makes the pursuer heir; so that the craving of the writs to be delivered *ad hunc effectum*, viz. to advise, if she would enter heir, ought not to be sustained. This allegiance was repelled against the inhibition, and the pursuit was sustained by the LORDS, to crave the production, to the foresaid effect, albeit it was year and day past, since Mr John Arthur's decease, whereby the defenders alleged, that the pursuer could not crave exhibition, for the foresaid effect, to deliberate, seeing the time given by the law to advise was expired; and in respect whereof she could not pursue, but to the effect that she might enter heir, which was repelled as said is, against the exhibition, but was reserved after the evidents were produced, to be disputed against the delivery thereof.

Act. Stuart.

Alt. Hope.

Clerk, Hay

Vide July 26, 1626, betwixt the same parties, *voce* REDUCTION.