

ing to the said Duncan, and using the said heirship goods after his brother's decease; to which it was *answered*. That the said Duncan being idiot, and the defender his tutor, his intromission was necessary, and he offered to make the goods forthcoming. THE LORDS found the libel relevant, and repelled the exception, in respect the defender made use of the heirship gear after his brother's decease, to whom he was appointed heir.

No 18.

Auchinleck, MS. p. 1.

1629. February 14. STEVEN against PATERSON.

No 19.

ONE Paterson being convened as heir to his father, John Paterson, by intromission with his heirship goods, for payment of a debt of 1000 merks owing by his father, and the defender purging his intromission by warrant of the LORDS granted to the defender, and directed to the Bailies of Edinburgh, to make inventory of the goods being in his father's house; according whereunto inventory was made; the goods contained in the which inventory are extant to be made forthcoming; wherefore he *alleged*, That he could not thereby be convened as he; and the pursuer *replying*, That by and attour the goods contained in the inventory, the defender had intromitted with his father's bible, a musket, a sword, a stand of curtains, and two pillows, which were the best his father had, and which were heirship, which the defender had used, and were not contained in the inventory; these particulars, and this manner of intromission, albeit both the particulars were few and little worth, and also that the defender's intromission was only qualified in using of them, and not in disposing of them or making any advantageous use or benefit thereof, was sustained to make him heir and subject to pay the debt of 1000 merks.

Act. _____

Alt. *Atton.*Clerk, *Hay.**Feb. Dic. v. 2. p. 28. Durie, p. 426.*

* * This case is also reported by Auchinleck :

Feb. 14. 1629. 13. March 13. — ANDREW STEVEN pursues William Paterson as heir to his father, at least successor *titulo lucrativo*, at least intromitter with certain heirship goods and gear for payment of 1000 merks; but by the defender it is *answered* to that part of the alternative concerning heirship goods and gear, that after his father's decease, he obtained a warrant of the Lords to a Bailie and a clerk to take up inventory of the gear within the house, which he is content to make forthcoming. It was *replied* by the pursuer, That he offers him to prove that he intromitted with other particulars condescended upon by and attour the gear contained in the inventory, viz. the best of each sort, and used

- No 19. the same as the other goods, which must infer that he behaved himself as heir. THE LORDS repelled the exception in respect of the reply, 14th February 1629. And the same being again disputed the 13th of March 1629, was sustained again, but agreed by submission.

Auchinleck, MS. p. 2.

1629. July 2.

CUNNINGHAME *against* MOUTRAY.

No 20.
A person intromitted with heirship moveables when he was not apparent heir, but continued in possession after he became apparent heir. Found that he had not behaved as heir.

THE defender being convened to pay his predecessor's debt, as heir to him, by intromission with his heirship goods after his decease; it was found that that intromission could not make him liable to pay the debt as heir, and that he could not be reputed heir thereby; because, at the time of the defunct's decease, at which time it is libelled that the defender intromitted, the defunct had then living, after his decease, a full sister-german, who only might be heir, and not this defender, who was but half-brother to the defunct; so that his intromission could not be as heir, seeing he could not then have been heir; neither was it respected what the pursuer answered, that seeing that sister-german died without any to represent her, and that she was never heir served, and that there is none now nearer to the defunct than the defender, his continuing in the possession of these goods, which were heirship in law to the defunct, must now make him liable *hoc nomine* as heir, seeing there is no other that can be heir. This was repelled and the allegiance sustained, but the process was sustained against him to make such goods as shall be proved to be intromitted with by him forthcoming to the pursuer *in ipsis corporibus*, and no further to be liable.

Act. *Cunninghame & Russel.*

Alt. ———.

Clerk, *Huy.*

Fol. Dic. v. 2. p. 28. Durie, p. 454.

1630. January 15.

CLEGHORN *against* FAIRLIE.

No 21.
The apparent heir found liable, because he had lain in the defunct's bed, drank in his mazer cup, and worn his silk hose, &c.

CLEGHORN, as assignee to a bond of L. 100 made to Katharine Scowler by umquhile James Fairlie, pursues the daughter of the elder brother of the said umquhile James Fairlie, as heir of conquest, and ——— Maxwell her spouse for his interest, and William Fairlie younger brother to the said umquhile James, as heir of line, for registration of the said bond; and the younger brother, heir of line, offering to renounce, the heir of conquest *alleging* that he could not be heard to renounce, because he had intromitted with the heirship goods of the defunct, standing in the house where he died, and remained still in possession of the house, and had lain in his bed and bed-cloaths which were standing in the said house; likeas, he meddled with a macer which was in the