

sal passive title, and therefore repelled the defences: Found the defender bound to fulfil the agreement entered into with the pursuer, in terms libelled."

No 94.

Lord Ordinary, *Swinton.* Act. *Lord Advocate Dundas, A. Campbell junior.*

Alt. *Solicitor-General Blair, Geo. Fergusson.* Clerk, *Home.*

D. D.

Fac. Col. No 221. p. 518.

S E C T. XIII.

Behaviour how purgeable?

1629. February 14. STEVEN against PATERSON.

INTROMISSION with heirship goods, found purged by the heir's obtaining warrant from the Lords, directed to the Bailies of Edinburgh, to make inventory of the goods in his father's house, and which inventory was accordingly made before process against him at the instance of his father's creditors.

No 95.

Fol. Dic. v. 2. p. 34. Durie. Spottiswood.

* * * This case is No 19. p. 9663.

1633. February 15. JAMES BANE against HUGH MITCHELL.

JAMES BANE, as assignee constitute to a bond of 1200 merks granted by the Earl of Tullibardine as principal, and John Mitchell, one of his cautioners, pursued Hugh Mitchell, as son and heir to the said John, at the least behaving himself as heir, by intromission with his father's heirship goods. *Alleged, He cannot be convened as intromitter, &c. because his father died rebel, and his escheat was dispoed, and declarator obtained thereon long before the intending of this cause; and for any intromission he had, he is countable to the donatar and none other, likeas he has right from the donatar to the said particulars intromitted with by him. Replied, Not relevant, except it were alleged, that the gift and declarator were before the excipient's intromission; for his intromission before the same being vitious, cannot be purged by the subsequent right gotten from the donatar, which may make him bruike the same heirship goods as his proper goods, but will never free him at any of his father's creditor's hands. THE LORDS repelled the allegiance, in respect of the reply, in*

No 96.

An apparent heir's intromission with the heirship moveables of his predecessor who had died at the horn, found not purged by a declarator of escheat afterwards obtained and purchased in by the heir, although before process moved against him on the passive titles.