

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.*

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.

1630. January 15.

CLEGHORN *against* FAIRLIE.

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

defunct's possession, and drank therein and used it at his pleasure, and did wear his green silk shanks; this allegiance was sustained to make him heir, and that he could not renounce, albeit he *alleged* that such intromission was no intromission which could burden him, the bed and macer being yet undisposed upon by him, and that the same pertained not to the defunct, but pertained to their mother, who gave her umquhile son the use thereof; and after his decease she meddled with the same, her said umquhile son remaining in a chamber within that same turnpike where the mother dwelt, pertaining to her, and where he was entertained and supplied by her; likeas her name was engraved upon the macer and she intromitted with the same; notwithstanding all which, the allegiance was sustained to make him heir, specially seeing that he dwelling in an house of his own when the brother died, he, after his decease, left his own house and entered and dwelt in that house where his brother died, which was sustained, albeit he *alleged* that it was done by his mother's warrant to whom that house where his brother died pertained, and where she received him; but it was *alleged*, that this heir of line, after his brother's decease, locked the door of the house and kept the keys thereof, and suffered none to enter while he entered himself.

No 21.

Act. Cunninghame.

Alt. Herriot.

Clerk, Scot.

Fol. Dic. v. 2. p. 27. Durie, p. 481.

1636. January 27.

STRAITON against CHIRNSIDE.

WHERE the predecessor had died at the horn, his escheat gifted and declared; the apparent heir's intromission, after the declarator, with moveables that were in the defunct's possession, did not infer behaviour; because it was not intromitting with his predecessor's goods, but with what belonged to the donatar, and which intromission, therefore, could be of no prejudice to the predecessor's creditors.

No 22.

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

\*.\* This case is No 17. p. 5395. voce HEIRSHIP MOVEABLES.

1663. February 21.

STIRLING against CAMPBELL.

AN heir's intromission with the whole silver work, is a behaviour as heir, since therein is comprehended the best of the kind which is the heirship.

No 23.

Fol. Dic. v. 2. p. 27. Stair.

\*.\* This case is No 8. p. 9656.