

1630. February 11. Ross against ELLIOT of Stobbs.

No 162.

IN an action of pointing of the ground, for a yearly ground rent of 400 merks, at the instance of James Ross, the defence against his sasine being that it was null, being base and not clad with possession, against him who was infest publicly, and a singular successor to the author of the pursuer's right; this exception being elided by a *reply*. That the pursuer was in possession of receiving of the annualrent foresaid, conform to his sasine, which supplied the baseness of the right; and this reply being admitted at the term of probation, the LORDS found, That this possession might be proved by witnesses, for albeit it tended to burden the land with that annualrent, which, the defender *alleged*, could not be done by witnesses, yet it was repelled, seeing it tended to corroborate the right, which was constituted by writ.

Act. *Belshes.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. 4. p. 225. Durie, p. 491.*

1671. December 13. MOFFAT against PHIN.

No 163.

MATTHEW MOFFAT, as executor dative to William Moffat, pursues Mr George Phin, to make payment of L. 150, which William Moffat had upon him the time of his death, and was intromitted with by Mr George Phin; who *alleged*, that the defunct being a beggar, and none of his relations known, and dying at St Lawrence, where the defender was minister, he represented the case to the Usurper's Council of State, who gave warrant to intromit with the beggar's money, and to bestow it upon the poor of the parish, which he did accordingly, and that the pursuer can shew no contingency of blood to the defunct; *2do*, He denied the quantity, and being libelled to be above L. 100, the same is not probable by witnesses, not being goods, but a liquid clear sum of money. It was *answered*, That the warrant of no council could take away the right of the defunct, or any representing him, and that it was impetrated by the defender, and so was on his own peril;— and as to the manner of probation, albeit witnesses cannot be admitted to prove the borrowing or delivery by paction, of a sum exceeding L. 100, because it was the fault and negligence of lender, in omitting to take writ, but intromission with the money of a defunct, being unwarrantable by way of paction, or without paction, it is probable by witnesses, where writ uses not, nor could be adhibited.

Witnesses were admitted to prove intromission with a sum of money that was about a defunct at the time of his death.

THE LORDS found the intromission and quantity probable by witnesses, but ordained to pursuer to condescend, and instruct any contingency of blood to the defunct, and if none could instruct relation of blood to him, the money