

vaded; nor can the Dean of Guild or private persons, on such pretexts, throw down houses without the heritors' consent.

The Lords inclined to think what the defenders had done was unwarrantable; but, in regard it was no other ways now reparable, save by satisfying the pursuer, they ordained some of their number to adjust the price, and see the heritor satisfied for his interest to the full; but refused to allow him his *juramentum in litem* thereupon.

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1697. June 24. WILLIAM DUFF *against* The EARL of SEAFORTH.

WILLIAM Duff in Inverness, pursuing the Earl of Seaforth, on the passive titles, for payment of a debt due to him by his father; and, referring the same to his oath, one of the articles whereon he was craved to be interrogated was, whether he had not intromitted with and used his father's Parliament-robcs. This the Earl reclaimed against, as neither pertinent nor relevant to infer vitious intromission, seeing that was only in consequence of his assuming the title and dignity of Earl, which was never found to infer a passive title. Yet the Lords thought his using his father's Parliament-robcs, was all one as if he had intromitted with his hangings, his horses, arms, or any other moveable furniture, which has been sustained to infer a passive title, where they were of any value, and such a considerable heirship as might import a behaviour. Yet see Dury, 6th November 1622, *Laird of Dundass against Hamilton*.

The Lords ordained the Earl to depone anent the interrogatory, and reserved the consideration what it should import till the advising of his oath; for it was urged such robcs may be poinded as well as any other moveables; and so, being *in commercio*, why should not the apparent heir's meddling therewith infer a *gestio pro hærede*. See January 15, 1630, *Cleghorn against Fairley*.

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1697. July 1. ALEXANDER and JOHN CUTHBERTS *against* CHARLES ROSS.

I REPORTED Alexander and John Cuthberts against Mr Charles Ross, writer in Edinburgh, who had been agent in managing their law affairs for many years, and had their papers in his hands; and they craving the same to be delivered up, he contended for a *jus retentionis et hypothecæ* in the writs, till he were reimbursed not only of the expenses he had given out, but likewise of a yearly pension of £4 sterling *per annum*, settled upon him.

ANSWERED,—They acknowledged his right of retention *quoad* his account of debursements, and which they were willing to pay, though extravagant; but he could not extend that privilege to his bond of pension, which was now nine or ten years owing, and amounted to no less than £40 sterling; seeing the practice of that hypothec was only introduced by consuetude, and depended merely on this reason,—that they had no other way of proving their