

1684. *January.* GIBSON *against* GRANT of Rothiesmains.

ROBERT GIBSON of Linkwood having pursued Grant of Rothiesmains for payment of a sum contained in his father's bond, as behaving himself as heir to his father, by intromission with the mails and duties of the lands, wherein his father died infest; *alleged* for the defender, That he could not be liable upon that passive title, because his father was denuded by expired apprisings, long before his decease, and the defender countable to the comprisers for any intromission he had with the rents. *Answered*, That the defender's father having continued in the possession of the lands during his lifetime, notwithstanding of the expired apprisings; and he having continued his father's possession; it must infer a behaviour as heir against him, unless he had obtained a right or warrant from the comprisers to intromit before his intromission. THE LORDS repelled the defences, and found the defender's intromission with the rents of the lands, wherein his father died infest and in possession, did infer a behaviour as heir against him, unless he had intromitted by a warrant or right from the comprisers.

*Fol. Dic. v. 2. p. 27. Sir Patrick Home, MS. v. 1. No 549.*

No 11.

A party's intromission with the rents of lands, in which his father died infest and in possession, found to infer a behaviour as heir against him, though the father, at his decease, was denuded by expired apprisings.

---

S E C T. III.

Intromission with the Heirship Moveables.

1607. *July 9.* GRANGER *against* GRANGER.

GRANGER pursues his brother Granger, as heir to his father, at the least as having behaved himself as heir to his father, by intromission with his heirship goods, to possess him in his tack, and to warrant him. It was *excepted*, That their defunct father dying at the horn, his escheat was taken, and declarator obtained thereupon, and this defender obtained right from the donatar. It was *replied*, That, before the gift of escheat and declarator, this defender being apparent heir, had intromitted with the heirship. It was *answered*, That the goods being the donatar's gear by the rebellion, albeit he had intromitted, yet he was debtor to the donatar, and so could not pertain to him as heir. Therefore, repelled the exception, in respect of the reply.

*Fol. Dic. v. 2. p. 28. Haddington, MS. No 1395.*

No 12.