No 13.

1610. *March* 8. BAILLIE *against* HOME.

A MAN found to be heir to his father, by intromission with his table, standing-bed, and almerie; albeit he *alleged*, That they were in the house, whereof he was fiar, in his father's lifetime; because he should have entered to the possession by the Sheriff, with inventory of the gear, being therein to be made furthcoming to all parties having interest, seeing he intended not to be heir.

Fol. Dic. v. 2. *p.* 27. *Haddington, MS. No* 1853.

No 14.

1618. *February* 7. FALSIDE *against* NAPIER.

IN an action of reduction *ex capite inhibitionis*, by Falside against Napier, Lady Ogilvy, the LORDS found, that in respect James Lord Ogilvy had immediately after his father's decease purchased ——— by deliverance of the LORDS for taking inventory of the hail goods and gear pertaining to his umquhile father, conform to the which, inventory was taken by the Sheriff; that therefore he could not be convened as heir for intromitting with any of his heirship goods and gear pertaining to him; and when it was duplied, that they offered them to prove, that he meddled with certain heirships not expressed in the inventory, the LORDS found that could not be had, in respect of the inventory taken, *et quia abfuit animus gerendi pro hærede.*

Fol. Dic. v. 2. *p.* 28. *Kerse MS. fol.* 138.

No 15.

In a suit upon the passive titles, where the intromission was with trifling articles, and the claim laid on a decree of spuilzie 36 years old, the Lords found intromission probable only *scripto vel juramento.*

1622. *November* 6. L. DUNDAS *against* ——— HAMILTON.

THE deceased L. of Dundas obtained decreet against umquhile ——— Hamilton of Peill, for spuilziation of teinds; which decreet being desired to be transferred, at the instance of Sir James Dundas, executor to his father, obtainer of the sentence, against the oye of the said umquhile Hamilton, against whom the spuilzie was decerned, as heir by progress to him qualified in the following manner, viz. in so far as the pursuer offered to prove, that the oye defender was heir to his umquhile father, which father was heir to his father, who was decerned in the spuilzie, at the least, he behaved himself as heir to him, in so far as that after the decease of his said father, who was decerned, he had intromitted with his father's heirship goods underwritten, in manner after qualified, viz. that by the space of four years, or thereby, after his father's decease, he had entered, and dwelt in the house of Peill of Livingston, pertaining to his father, where there being then within that house, his umquhile father's best board and standing bed, with a brewing cauldron, he used the same by eating at the board, lying in the bed, and brewing in the cauldron; likeas, he

delivered a great pot, which was the best pot, to a flesher, for satisfaction of some flesh, furnished to himself, after the decease of his father; as also having sold the house and lands of the Peell to the Earl of Linlithgow, he delivered, and freely gifted the said board and bed to the Earl of Linlithgow, which was a disposition and intromission sufficient of the law to make him heir to his father, and consequently to make the defender, his son, who is served heir to his father, heir also, by progress to the goodsire, his father having intromitted with and disponed upon the heirship goods foresaid, as said is. THE LORDS found not the foresaid qualification relevant, concerning the defender's father's using of the board, bed, and cauldron, to make the defender, or his father, heir to the goodsire; and as to that part of the qualification anent the gifting of the said bed and board, and delivering the pot to the flesher, the LORDS also found it not relevant te make him heir, except the pursuer would prove, that the same was gifted by writ, because the particulars foresaid, so intromitted with, and disponed, were but matters of small importance, and not of such consequence, whereby the defender should be found heir to his goodsire. In which decision, the LORDS were also moved by consideration, that the sentence desired to be transferred was recovered about 36 years since, and that it was never executed against the goodsire, against whom it was recovered in his own time, nor against his son in his lifetime, but only now craved against the oye, who was not born the time of the sentence; and sicklike, that the goodsire's wife lived after the goodsire's decease, and kept the possession of the alledged heirship goods four or five years after her husband's decease, before ever the son intromitted. No 15.

Act. *Aiton & Oliphant.* Alt. *Burnet.* Clerk, *Gibson.*

Durie, p. 33.

*** Spottiswood reports this case.

1622. *November* 7.—A decreet of spuilzie being sought to be transferred against one as behaving himself as heir to his father by intromission with a cauldron, in so far as he gifted the same after his decease; it was found, That it could not be proved but by writ or oath of party, because it would bring upon the defender the profits of a spuilzie for many years.

Spottiswood, (EJECTION and SPOLIATION.) *p.* 87.

1626. *July* 14. JOHNSTON *against* MASON.

No 16.
Found in conformity with Bailie a-

GILBERT JOHNSTON, and Mason, his spouse, convene Mason, as behaving himself as heir to his umquhile father by intromission with his heirship goods, to