

No 4. lands of Loresslie, seeing there was an executor confirmed; and albeit the Earl received several sums of money from the factor, upon bills of exchange, before he got the tack from his mother-in-law, yet these sums can only be ascribed to the rents of the lands of Loresslie, and other sums of money belonging to the Earl himself, especially seeing the sums contained in these bills, preceding his right from his mother-in-law, do not exceed the rents of his own lands, and the annual rents of the sums of money that belong to himself, and the stating the accounts with the factor cannot infer a behaviour as heir, not only for the reasons above mentioned, but also for this reason, that, albeit there be a balance stated as due to the Earl, yet he never received it; but it is yet resting; so that behaviour as heir being *majus animi quam facti*, it cannot be understood that the Earl designed to behave as heir, seeing he has not reaped any advantage of any rents of the lands belonging to his father, but which he had right to from his mother-in-law.—THE LORDS found, that the late Earl being denuded of his estate, in favour of his Lady, from whom this Earl hath a tack, and that the factory given to William Couper being general, it could not infer particular behaviour; and that the vitious intromission was taken off by the confirmation of an executor, before the intending of this cause.

Sir Pat. Home, MS. v. 1. No 290. p. 431.

S E C T. II.

Intromission with the Predecessor's Rents is a Behaviour. What understood to be the Predecessor's Rents.

1628. March 22.

FARQUHAR against CAMPBELL.

No 5.

INTROMISSION by an apparent heir with the rents of a subject, whereof his father died in possession, found not to infer behaviour, it being afterwards understood, that the defunct had no right to the subject, but a third party, to whom the apparent heir behoved to account for his intromissions; and, therefore, the creditors were not prejudged by the apparent heir's intromission with a subject which did not belong to their debtor.

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

*** This case is No 152. p. 9022. *voce* MINOR.