

he intromitted with the said tack-duty, after his said father's decease, by himself and his tutor; which makes him heir: And the defender excepting, that his said father was never infeft in the lands, neither was he ever tacksman of the teinds, and no such right ever was, nor can be shown; but, by the contrary, whatever intromission he had after his father's decease, either with the duties of the lands, or with the teinds, the same was not by virtue of any right, either heritable, or of a tack in his father's person, which never was, nor by virtue of that alleged tack set by his father, which he never acknowledged; but that the same was as apparent heir to his goodame, who died heritably infeft in the lands, and no other infeft since: and, as to the teinds, he meddled also with them, as apparent heir to his goodsir, who was tacksman, without any respect had by him to his father's possession. The Lords found this exception relevant to purge that member foresaid of the summons, that he could not be convened, as behaving himself as heir to his father, it never being offered to be proven that his umquhile father had any right; and the entry to that possession, which subsisted in his father's person the time of his decease, made him not to be reputed as heir to him; the same being done by virtue of another title, which he derived from his goodsir, in whose person the same stood, and which he claimed as apparent heir to him; there being no intervening, nor mid impediment to hinder or prejudge him therein: for the intervening of his father's possession, and his continuing and dying therein, and the defender's immediate entry thereafter to that possession had by his father, was not sustained to make him as heir liable to his father's debts, for the reason foresaid.

*Act. Advocatus. Alt. Nicolson and Dunlop. Gibson, Clerk. Vid. 19th December 1638, between these parties.*

*Page 820.*

1637. *January 18. The EARL of HUME against LADY HUME and OTHERS.*

In a reduction of bonds particularly made by the umquhile Earl Hume to the lady his mother, and other defenders, as being done *in lecto ægritudinis*; in the which action there was a general clause for production of all and whatsoever other bonds made to them in that time, beside the particular bonds libelled, which were produced,—specially called for; and certification being sought against the said other bonds, upon the said general clause desiring the same to be reduced for not production,—the Lords found, that they would not reduce for non-production upon this general clause, in respect such general clauses are not sustained in actions of reduction, albeit they be usually sustained in improbations; and the Lords declared that they would not break the ordinary forms here.

*Act. Nicolson and Craig. Alt. Advocatus and Steuart. Gibson, Clerk. Vid. 12th December 1634, Ross.*

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