

1671. November 23. ALEXANDER RORISON *against* SINCLAIR of Ratter.

No 44.

UMQUHILE William Sinclair of Ratter, being debtor to Alexander Rorison, he pursues this Ratter, as representing his father, to pay the debt, and condescends that he has behaved himself as heir by intromission with the rents of the lands of Ratter, wherein his father died last vest and seized, as of fee, and produces his infeftment. The defender *alleged* Absolvitor, because his intromission was upon a precept of *alare constat*, as heir to his grand-father, which was sufficient to purge his general passive title, though it cannot defend against the pursuer in time coming, seeing the defender was *in bona fide*, and knew not his father's infeftment. It was *answered*; That he cannot pretend ignorance of his father's infeftment, having his writs in his hands, and it is but a mere pretext to immix himself in his father's heritage, without representing him according to law, which would be a common road, if it were once allowed.

THE LORDS repelled the defence, and found the defender liable, as behaving as heir.

*Fol. Dic. v. 2. p. 30. Stair, v. 2. p. 8.*

1673. January 22.

JAMES CHALMERS Advocate, *against* FARQUHARSON of Inverey, and AGNES GORDON, his Mother.

JAMES CHALMERS having been cautioner for Farquharson of Inverey's father, and forced to pay the debt, did obtain an assignation to the bond, and thereupon pursued this Inverey, as representing the father, upon the passive titles, and the said Agnes Gordon, as vitious intromitter with her husband's goods and gear. The passive title against Inverey, was that he had acquired right to a comprising not expired, and had intromitted with the rents of his father's lands, which was not found relevant to infer a passive title; but it was allowed to the defenders to condescend and produce the comprising, and to the pursuer to prove, *scripto vel juramento*, which being done the pursuer, without intending any new process, might have the benefit of the act of Parliament anent debtor and creditor. It was *alleged* for the said Agnes Gordon, That she could not be liable as vitious intromitter, because she was donatar to her husband's escheat, and thereupon had obtained a decret of declarator. It being *replied*, That she had intromitted long before her gift, there was litiscontestation in the cause. Probation being led and ready to be advised, notwithstanding whereof, there being several for reforming the allegiance as having proceeded upon wrong information, the procurator did condescend upon this allegiance as relevant, viz. that she being married to a second husband, who had obtained the gift of her first husband. Ia-

No 45.

Found in conformity with No 43. p. 9686.