

Lords found, that, notwithstanding of both these, he behoved to verify; otherwise, that he, from whom the charger had comprised, was infest; and so found the reason of suspension relevant.

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1629. February 14. ANDREW STEPHENSON *against* WILLIAM PATERSON.

ANDREW Stephenson pursued a transferring of a bond of 1000 merks, against William Paterson, as heir to his father, at least behaving himself as heir by intromission with his heirship-goods and gear. Alleged, Any intromission he had, was by virtue of the Lords' warrant. Replied, That he intromitted with more than was in the inventory made up upon the warrant, *viz.* with a bible, a sword, a musket, a sponge, two pillows, and a table-cloth. Duplied, That ought to be repelled, and no further intromission sustained against him; because, he having purchased a warrant to inventory the whole goods within his father's house, if any thing of mean importance has been omitted by the clerk's negligence, his omission cannot hurt the defender, especially he declaring *se, non eo animo ut pro hærede gereret*, to have intromitted with them: And, if it be proven against him, he is content to make the same forthcoming with the rest contained in the inventory *cum omni causa*. The Lords repelled the allegiance, and sustained the summons and reply to be proven against the defender.

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1629. July. The COUNTESS of DUMFERMLING *against* The EARL of DUMFERMLING, her Son.

THE Earl of Dumfermling being obliged, by contract of marriage, to infest his Lady, in conjunct-fee with himself, in all lands conquest by him during the marriage: She pursued her son, as heir to his father, to infest her in the mill and mill-lands of Fyvie, as being conquest in her husband's time from N. Alleged, It could not be reputed conquest, because he offered to prove that N. had no valid feu of the said mill, &c. lawfully confirmed before the act of annexation and erection of Fyvie in the Earl's favours; in respect whereof that N. had no good right to the said mill, but the Earl might have challenged it as his own at any time; and so not conquest. Replied, It behoved to be accounted conquest, because he acquired the same of N. by receiving a resignation *ad perpetuam remanentiam*, and by giving him sums of money therefore. Duplied, The receiving of a resignation, *ad remanentiam*, was not an acknowledgment of N.'s right to be good, and for sums of money given; therefore it was to be accounted for his kindness only, and not for his right, which was null. The Lords found the exception relevant:—1st July 1629.

Afterwards it was replied by the pursuer. That N.'s feu, being granted by the Earl of Dumfermling, then prior of Pluscardy, before the act of annexation, although it was not confirmed before the annexation, yet the infestment was valid; in so far as, after the erection of the same benefice in the Earl's person, he received the feu-duties of the same mill