

1673. *July 23.* JOHN MITCHELL *against* JAMES MITCHELL.

JAMES Mitchell, having recovered decret against Margaret Cunninghame, for payment of 500 merks, contained in an heritable bond granted to Henry Mitchell, to whom he was heir,—compearance was made for John Mitchell; who ALLEGED, That the said Henry, by his testament, had left 200 merks of that sum to him in legacy, whereof he ought to be answered and obeyed.

It was ANSWERED, That the sum, being heritable, could not fall under legacy.

It was REPLIED, That the said James, who was heir, had confirmed that sum as moveable, and given up that bond in the inventory of the moveable debts, whereby he had homologated the legacy, and could not quarrel the same; it being special out of that same bond confirmed to him.

The Lords, notwithstanding, did prefer the heir; and found, That the confirmation being upon error, and of a bond that could not fall under testamentary confirmation, could not prejudice the heir.

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1673. *November 21.* M'KENZIE *against* M'CLAUD.

IN an action of improbation, at M'Kenzie's instance, against M'Claud;—it being ALLEGED for the defender, That the seasine of the lands produced could be no title, because it only flowed upon a precept of *clare constat*, which was sufficient for a passive title, but not for an active title:—

It was ANSWERED, That, albeit the precept of *clare constat* gave no interest nor title to pursue for any thing that belonged to an heir, besides what was contained in the precept and seasine, yet it was a sufficient title as to the right and interest of these lands therein contained, to pursue either for maills or duties, or an improbation.

The Lords did repel the defence, and sustained the improbation, and found the title sufficient.

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1673. *November 27.* ROBERT RUSSEL, Provost of Stirling, *against* WILLIAM LAMB.

IN an action of poinding the ground of the lands of Southbrae, at the instance of the provost, being infest in an annualrent, to which he had right flowing from Anna and Margaret Wallaces, as heirs to their father, to whom the said annualrent was disposed by his elder brother;—it being ALLEGED for William Lamb, That he had comprised the said lands from the said Anna and Margaret, as charged to enter heir to their father and uncle, and all right that was in their person; which must carry the right of the said annualrent which was due out of the said lands; as was found in a case betwixt the Laird of Craigiehall and the Lord Renton:—