

* * Sir P. Home reports this case

1686. *February*.—IN an action at the instance of Duff of Bracco against Innes of Auchluncart, for payment of a sum, as representing his father, who did represent his grandfather, the LORDS found it relevant to be proven by witnesses, that the defender's father did intromit with the moveable heirship, and mails and duties of the lands belonging to Walter Innes, the defender's grandfather, the pursuer's debtor; as also, that the defender's father did accept from the said debtor, to whom he was apparent heir, and when he was *in familia*, of a disposition to the lands of Balvenny, formerly disposed to the pursuer's debtor by Balvenny, for relief of his cautionry for the said Balvenny, and did make use thereof after the grandfather the pursuer's debtor's decease, by intromission with the mails and duties thereof, or by disposing, or obliging himself to dispoise the same, or consenting to disposition or alienation of the saids land.

No 24.

Sir P. Home, MS. v. 2. No 783.

* * A similar decision was pronounced, Henderson against Wilson, 17th January 1717, No 118. p. 9784. PASSIVE TITLE.

1693. *January 25.*

M'KENZIE of Rosehaugh *against* The MARQUIS of MONTROSE.

No 25.

GEORGE M'KENZIE of Rosehaugh against the Marquis of Montrose, on a bond of pension of L 7 Sterling yearly, during Sir George M'Kenzie's abode at Edinburgh:—THE LORDS found, seeing the bond did not mention the Marquis's heirs, it terminated and expired with the granter, and did not last during the receiver's life, being personal, like those *feuda de cavena et camera* that Craig speaks of, *lib. 1. feud.*

Fol. Dic. v. 2. p. 73. Fountainball, v. 1. p. 550.

1711. *January 19.*

LADY ORMISTON *against* HAMILTON of Bangour.

IN the cause often mentioned, betwixt the Lady Ormiston and Hamilton of Bangour, (*see APPENDIX.*) some points came this day to be decided. The first was, how far the Lady could charge Bangour with the extraordinary expenses wared out in obtaining the Lady Houssil to be confirmed executrix to her brother, my Lord Whitlaw; it being *alleged*, That the same were occasioned by the deceased Bangour's influencing his nieces to oppose the same, and raise advocacy of the edict, and so by his fault and means; and this having been found relevant, to give the Lady retention out of the executry, it was now *contended*, That he being minor, it was yet competent for him to allege, that

No 26.
An action *ex delicto*, tho' *rei persecutoria* only, found not to go against heirs.