

1686. *March.* DUKE OF QUEENSBERRY *against* WILSON of Spango.

IN the action of count and reckoning at the instance of the Duke of Queensberry against Wilson of Spango, the LORDS found that Spango's promiscuous intromission with the rents of the lands made him liable to count for the rents of the whole barony, albeit he had no factory in writ.

In this action the Duke of Queensberry having made use of the account given in by Spango for proving of the charge, and referred the same to his oath; and it being *alleged* for him, That he was not obliged to depone upon the charge, unless he likewise depone upon the discharge; *answered*, That Spango being already found countable for the rents of the lands, in respect of his promiscuous intromission which was instructed by his discharges, he ought to depone upon the charge, without referring the discharges likewise to his oath. THE LORDS ordained Spango to give the oath upon the verity of the charge without deponing upon the discharge, which they found ought to be otherwise instructed than by his oath.

Fol. Dic. v. 1. p. 242. Sir P. Home, MS. v. 2. No 793.

No 55.
Partial intromission with the rent of lands, was found to make the intromitters liable in the whole rents.

1701. *February 8.* IRVING *against* IRVING.

IRVING of Drum pursues Irving of Artamford for his intromission, for sundry years bygone, with the rents of a barony belonging to Drum, for which he had no written factory or commission, but only verbally and as a friend; and witnesses having proven his partial intromission with some of the rooms of that barony; this was urged as a promiscuous intromission to make him countable for the whole, which the LORDS repelled. Then Drum offered to supply it by his oath; against which Artamford *alleged*, That having elected your manner of probation by witnesses, you cannot now recur to my oath. *Answered*, There is no fear of contradictory probation in this case, for it is only referred to your oath, what farther you intromitted with more than is already proven by your receipts, or the witnesses' depositions. THE LORDS ordained him to depone; but a question arose, if he might not adject his discharge to his oath, as well as they made him now to constitute the charge against himself by his oath: and if he might not lawfully depone, as I intromitted at Drum's desire without writ, so I paid it in to him again without any writ from him; or if his oath in that case would be divided, and prove the charge against him, but not his own discharge, or if it behoved to be taken altogether complexly. THE LORDS allowed him to depone as he thought fit, reserving to themselves the consideration and import of the qualities at the advising of the cause.

Fol. Dic. v. 1. p. 242. Fountainhall, v. 2. p. 108.

No 56.
Found the reverse of Queensberry against Wilson, *supra*.