

1749. *February 2.* FERGUSON *against* The OFFICERS OF STATE.

No. 9.

INTROMISSION with goods without proving *quo titulo*, not sufficient to found an action for the price. *Vide ULTIMUS HERES.*

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1752. *February 26.*

LADY JANE SCOTT *against* The DUKE of BUCCLEUGH.

No. 10.

THE Earl of Dalkeith granted bond to his sister Lady Jane, obliging him and his heirs and successors in an heritable bond on the estate of East Park, granted by the Dutchess of Buccleugh to his brother Lord Charles Scott of L.20,000, to pay her L.15,000 with annualrent and penalty, in order to her charging him to enter heir, and adjudging the said heritable bond for payment of the said sums, provided that no diligence should thereon be competent against his person or estate. The Earl died before any adjudication was obtained, and neither made up any titles to the heritable bond, nor even survived Lord Charles three years;—and therefore the Duke of Buccleugh being sued as representing his father upon this bond; it was pleaded for him, that though he was served heir to his father the granter, and has succeeded to him in all his other estates, yet the obligation in that bond being limited to the Earl's heirs and successors in the L.20,000 bond, in which the Duke neither had succeeded, nor could succeed to him in it, because the Earl had never made up any title to it, and therefore was not liable; and that the sole purpose of the bond was to adjudge that heritable bond from the Earl, which by his death was become impres- table. But the Court, in respect that the succession to the heritable bond of L.20,000, has now by the death of the Earl devolved to the defender, his eldest son and heir, and that the defender is heir served and retoured to the Earl, and has succeeded to him in all his other estates, therefore found the defender liable to perform and make good the bond of L.15,000 and interest thereof, so as effectually to give the pursuer security in the said heritable bond of L.20,000, for security and payment to her of the said L.15,000 and interest thereof, and penalty if incurred, but not to affect the defender's person, nor his estate real or personal, other than the said heritable bond of L.20,000, and lands therein contained. (See DICT. No. 69. p. 9725.)