

S E C T. IV.

Intromitting with the Predecessor's Writs and Evidents.

No 26.

1628. July 8.

DUNBAR against LESLIE.

BARE intromission with evidents, no other deed being done thereon, was not sustained to the effect of behaviour. See No 28. p. 9670.

Fbl. Dic. v. 2. p. 16. Durie.

*** This case is No. 15. p. 5392, *voce* HEIRSHIP MOVEABLES.

No 27.

Intromission with a charter-chest, but not upon inventory, and keeping it more than a year, found to infer behaviour, altho' the apparent heir gave a bond to be accountable, and had never any benefit by, nor intromission with the estate.

1670. June 28.

ELEIS of Southside against CHARLES CARSE.

RICHARD CARSE of Fordell, during his minority, granted a bond to his sister Anna Carse in liferent, and Katharine Eleis her daughter in fee, for the sum of 4000 merks; which being assigned to James Eleis of Southside, he did pursue Charles Carse as heir to Dr Carse his father, who was heir, at least behaved himself as heir to the said Richard, granter of the bond, in so far as the defender's father, Dr Carse, being apparent heir-male to the said Richard, did revoke all deeds done by him during his minority, which revocation was registered in the Sheriff-court books; as likewise, did intromit with the charter-chest of the whole writs and evidents belonging to the said Richard of the estate of Fordell, whereof he granted a receipt, and did keep the same for the space of two years until he died. It was *alleged* by the defender, That albeit he was heir to his father Dr Carse, yet the passive titles libelled were not relevant to make his father represent Richard Carse of Fordell his nephew; *imo*, Because his father's being only apparent heir-male by revocation of his nephew's deeds, who was minor when he granted this bond, did not behave himself as heir, unless he had served himself heir and intended reduction thereon, which he never did; *2do*, His intromission with the charter-chest could not infer *gestionem pro harede*, because there being an heir of line who had tutors, and the Doctor being apparent heir-male, any intromission he had with the charter-chest, was upon an agreement and receipt bearing an obligation to make forthcoming to any who should have best right, which being granted *intra annum deliberandi*, and that he might advise that the lands were provided to the heirs-male, could not infer *gestionem pro harede* to make him liable to the whole debt, seeing he never made any use of the said writs, nor did serve himself heir, nor ever had any benefit of the estate. THE LORDS did sustain the first defence, and found that a naked revocation, whereupon nothing followed, did not infer a behavi-