

of provision, for registration of a bond of 200 merks,—instructs the passive title, by the father's contract of marriage; according to the which they are in possession of certain lands; and refers to their oath, in so far as shall not be proven by writ. But the Lords found, That they are not of the age that they can swear;—neither is their tutor holden to swear for them, except they would prove otherwise them to be heirs; and, to offer to prove successors to their father in lands, as use is, *titulo lucrativo post contractum debitum*, is to be understood of heirs of line. It was farther excepted, That the heirs of provision could not be convened while the heirs of line were discussed; as was alleged before in the process against Craigmillar. But it was replied, That, in so small a matter, the pursuer might spend the whole sum he claimed before he could get them all discussed. And, as we have said also in that anent Craigmillar, the practick of the country would be corrected: liberty being granted to the creditor to pursue any representing the defunct; reserving to them their relief, by discussing amongst themselves at their pleasure.

Page 173.

---

1650. January 18. WILLIAM WATSONE *against* T. and A. HALYBURTOUNE.

[See page 453.]

IN the process at Watsone's instance against Halyburtones, as intromitters with the goods and gear of umquhile Andrew Brand,—the defenders strove to purge their vitious intromission by the gift of escheat of the said Andrew, purchased long after; alleging, That they could not be called as intromitters with the goods of the said Andrew, since he had none but those which were the King's, incontinent after his rebellion; the letters of horning bearing expressly, that the escheat-goods and rebel's moveables should be incontinent brought after the rebellion. It was replied, That could hardly be sustained, before gift and general declarator, in prejudice of lawful creditors; and practicks were craved to be sought out, and especially anent the purging of vitious intromission by such a supervenient title, sundry years after the said intromission.

Page 174.

---

1650. January 18 and 22. KER *against* SIR THOMAS THOMSONE.

IN the suspension, Ker against Sir Thomas Thomsone,—the reason instructed by the tack, alleging, That he is only bound for so many bolls, for £8 the boll, and so must be free for the £8, *quasi electio sit debitoris*,—was repelled, and the tenant decerned in the bolls;—the charger condescending how many he had sold, and if he had enough in his barn-yard; as if the tack had said, at least £8 for ilk boll, if the victual should come never so cheap; the same being to be paid for the lands of Dudingstone.

Page 175.