

1670. *June 21.* ANDREW BRYSONE *against* _____.

IN a cause of Mr. Andrew Brysone, FOUND, That a man might very well be reputed a bankrupt who died without an heir, *viz.* to whom his own son or other nearest would not enter heir.

Advocates' MS. No. 28, folio 75.

1670. *June 21.* GRAHAME *against* CAMPBELL.

ONE being convened to pay a debt, as vitious intromitter with the goods and geir of the debtor: this defence was SUSTAINED; No process against—&c, as intromitter; because he offers him to prove, that the defunct having died rebel, his escheat was gifted, and declared at the instance of the donatar before the intending of this cause; and found that a donatar declared is as sufficient for purging vitiosity as an executor confirmed, seeing the intromitter is alike countable to both. The parties were Grahame and Campbell.

The next day after, this cause being again called; for eliding that defence, it was ALLEGED, that the defender had meddled and intromitted with the moveable heirship, and with heritable bonds; (and when they were desired to condescend *quomodo*, they condescended that he had meddled both with the bonds themselves, and with the sums contained therein,) *vid.* with bonds bearing annualrent, which though they remain moveable *quoad* the children, yet are heritable *quoad fiscum*; *item* with a comprising led at the defunct's instance, whom he was alleged to represent: None of all which falls under the compass of any gift of escheat; and so the defence of a donatar declared, (who would have no right to thir particulars) can never maintain the defender against this pursuit.

To this it was ANSWERED,—*1mo*, The moveable heirship falls under escheat; *2do*, his meddling with heritable bonds *non relevat* to infer gestion, but his meddling with the sums of these bonds *relevat*, of their own consent; for though the meddling with a charter-kist will make a man heir *passive*, yet it were most hard that the meddling with a single paper should have the same effect. *3tio*, As for his meddling with the comprising, he has a colourable pretext therefore: *viz.* it was *ad deliberandum*, and for inspection only. *Item*, he meddled only with the bygone annualrent owing before the defunct's decease, for which he must be countable to the donatar, *et quælibet causa, etiam minus probabilis et fatua, excusat a titulis passivis.*

This answer was found relevant.

Act. Lermont.

Alt. Falconer.

Advocates' MS. No. 29, folio 75.