

thereupon; *vid.* a summons of reduction, &c. To the third, his calling the other comprisers, &c. can never bind on him a passive title, because he did it by virtue of a comprising of the reversion, the right whereof was established in his person.

To this it was REPLIED,—*1mo*, That *ignorantia juris neminem excusat*. *2do*, He can never pretend he meddled only for inspection; seeing he should have done it *modo et via juris*, and should have had a sentence of a Judge to that effect, and not have done it at his own hand. *3tio*, It were a most dangerous thing to find meddling with a charter-kist, (they offering it back, though within the year,) not to infer a passive title; seeing there may be none that knew what was in the charter-kist, and by this means an apparent heir might abstract the very marrow of it, and yet none should be permitted to quarrel him therefore. To the *2d*, about the revocation, it deserves no answer. To the *3d*, offers to prove, in that count and reckoning, he received that to which he could lay no other title nor claim but as heir to the defunct, who had the right of reversion.

*Act.* Eleis and Lockhart.

*Alt.* Sinclair.

*Advocates' MS. No. 30, folio 76.*

1670. *June 29.*—In the cause Eleis and Carse, mentioned before on the 22d day, *referente Domino Stair*, FOUND, That his intromission with the charter-kist (proven by his receipt thereof granted to my Lord Arniston, from whom he borrowed it,) was sufficient to infer a behaviour.

*Advocates' MS. No. 40, folio 77.*

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1670. *June 29.* HOYLLS *against* FALCONERS, Master and Warden of the Cunyie-house, and my Lord Halton.

THEIR persons were executors to one Hoyll, who was copper-melter to thir defenders, and had of them a bond for some lignates of copper furnished by him to them; and on this title pursuing, it was ALLEGED, That they could not be heard; because it was offered to be proven that those lignates were altogether insufficient, neither dighted nor brushed from the sand, wherewith they were extremely deceived in the weight, and so sustained a huge damage and prejudice.

REPLIED,—They could not now obtrude insufficiency, since they had accepted the same on their hazard, and had in their own count-book set them down at such a price.

My Lord Stair would not sustain the allegiance, unless they would say the insufficiency was such as could not well be perceived at the time of the bargaining.

*Advocates' MS. No. 43, folio 77.*