

*stipulationibus repetita creduntur*,—*l. 134, sec. 1, D. de Verb. Obligat.*; and to interpret it otherwise is but *verba captare et corticem sequi*, contrary to *l. 29, D. de L. L. l. 5, C. eod.* and is justly called *sæva verborum prærogativa*: And to interpret “heirs-female” to be those not of his body, is as absurd, in law, as to argue from the words, “*Hoc est corpus meum*,” a transubstantiation, is a paradox in divinity; *et l. 50, sec. ult. D. de Legat. 1*, lays down a good rule of interpretation, as first *consuetudo patrisfamilias*, then *mos regionis*, then *charitas et necessitudo legatarii, et verba quæ præcedunt et sequuntur*; *et Mantica de Conjecturis Ult. Voluntat. Lib. 8, tit. 11, sec. 6, ubi hæreditas vadit de hærede in hæredem, semper intelligitur de hæredibus sanguinis et descendantibus*; and Bartolus, *ad l. 29, D. de Lib. et Post.* says, *Appellatio hæredis in odiosis est restringenda, aliter in casu favorabili*; *et verba sunt improprianda ut evitetur sensus absurdus*; as necessarily would follow here, if heirs-female signified his heirs-female whatsoever.

The Lords looked on this as a case of divination, and a *quæstio voluntatis*, and saw a plain conflict and *pugna* betwixt the letter of the words as they stood and the true sense and meaning of the speaker; and, by a plurality of seven against six, found they ought to supply nothing, but take them as they stand; and found the succession devolved to Katharine Dick, his heir-female, and the clause was not to be restricted to the heirs-female of James Dick’s body. But there were two or three Lords absent at this vote, who were of the contrary opinion.

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1705. *February 28. JAMES TAIT against SAMUEL GRAY, FISCAL of EDINBURGH.*

JAMES Tait, servant to Mr John Falconer, younger of Phesdo, against Mr Samuel Gray, procurator-fiscal to the Town of Edinburgh. Some English stockings and silk stuffs, which are prohibited by the Act of Parliament 1700, being seized; and, in carrying them away, this Tait and others assaulted the town-officers who were carrying them, and took away a pock, containing a quantity of these stuffs, from them: whereon Tait being apprehended and imprisoned, he gave in a bill of suspension, complaining he was illegally incarcerated, without a previous subscribed information; and they had refused bail, contrary to the late act for personal liberty, and had taken the officers as witnesses against him, though inhale; seeing, if the goods were either lost or embezzled by their fraud or negligence, they became answerable therefore.

The Lords considered, that these acts against imported prohibited goods did not receive punctual and rigorous execution, but their transgression was much connived at; and lately, when such goods were seized in Captain Charters’s custody, that he run with his sword at some of the manufactory-men; yet this riot was not resented, but stifled; therefore the Lords would not pass his bill of suspension, without he found sufficient caution to pay the damages, and undergo the censure that should be inflicted on him, if found liable.

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