

1722. July.

Lord SALTON *against* FRASER.

No 96.

A SON *in familia* being in use, by his father's directions, to intromit with and uplift subjects belonging to him, was pursued, after his father's death, by the heir, to account for his intromissions. The defender *contended*, That he was only his father's hand, that he acted without a commission in writ, and what subjects he intromitted with, he delivered to his father, without any receipt. THE LORDS refused to sustain the process, unless the pursuer would offer to prove resting and owing by the defender's oath. See APPENDIX.

*Fol. Dic. v. 2. p. 140.*

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DIVISION III.

*Donatio non præsimitur.*

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SECT. I.

Aliment bestowed without Paction, when Paction might have been:

1665. July 21.

Laird of LUDQUHARN *against* Laird of GIGHT.

No 97.

THE Laird of Gight having married Ludquharn's daughter, who remained in her father's family, and brought forth a bairn to Gight, and died; Ludquharn, the child's goodsir, kept her in his family several years and now pursues Gight for her aliment; who *alleged*, Absolvitor, because the pursuer never having required a promise of this aliment, nor desired the defender to take home his daughter, it must be presumed that the pursuer did it *animo donandi* for his own oye.

THE LORDS found this defence relevant, for all years preceding the intending of this cause.

*Fol. Dic. v. 2. p. 140. Stair, v. I. p. 301.*