

heir of conquest, the right did return to himself, and not to Thomas, who was only heir of line.

The Lords having considered the provision in the disposition made to Archibald; albeit it did appear that the intention of the father was, That Archibald, the second son, succeeding to the estate, should denude himself of these lands, in favours of Alexander; or if he died, in favours of any other younger brother; yet the question being anent lands and heritage, and betwixt minors, they continued to give their interlocutor until they should be majors: But, in the meantime, ordained the profits of the lands of Carraway to be paid to Thomas, by the tutors, for his aliment,—they not being above 1000 pounds Scots of yearly rent.

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1670. July 13. WILLIAM JAMIESON *against* GEORGE SEATON of MINNES.

JAMIESON, as having right to a bond granted by William Seaton of Minnes, having pursued George his son, as representing his father, upon this passive title,—That he had pursued for payment of an heritable bond granted to his father;—

It was ALLEGED for the defender, That, albeit the bond was heritable, yet he had either confirmed the same as moveable, or gotten a license; and that his *medium concludendi* against the debtor, was upon a promise to make payment to him; which, *de facto*, was never made.

The Lords did sustain the defence; and found, That an apparent heir, having only intented action, and never received payment of an heritable sum, and not having libelled, that it did belong to him as heir, could not infer *gestionem pro hærede*; which being a passive title to make him liable to his predecessor's whole debts, there ought at least to be proven that he had *animum adeundi*, or did actually intromit.

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1670. July 14. The LORD RENTON *against* The EARL of HOME.

IN a declarator, at Renton's instance, against the Earl, to hear and see it found, that his right to a contract, *in anno* 1631, betwixt James, Earl of Home, and John and Francis Stewart, whereby the Earl was to possess the estate of Coldinham in satisfaction of £19,220, which was due for arrears of £4000 sterling, contained in a prior contract, which was extinct; in so far as the Earl had entered to the said estate, upon a decret, *in anno* 1643, and had ever bruiked the rent since; which would extend to more than the foresaid sum:

It was ALLEGED for the Earl, That, the time of his entry, he had right from the heirs of line of the Earl of Home to another contract, and a decret *in anno* 1630, ordaining the said James, Earl of Home, to be put in possession of the said lands, for the annualrent of £1000 sterling, *fructibus in horreum non computandis*; and that in law he might ascribe his possession to that decret,—it be-