

1687. February 5. LADY NEWMILLS *against* ISOBEL and ESTHER SMITHS.

No 11.

FOUND that a right acquired to a defunct's bond before the acquirer became tutor or pro-tutor, &c. to the debtor's son, is not presumed taken to the pupil's behoof. But compensation was sustained upon this ground, that the tutor had not compted for his intromissions with the defender's means; for which a process was depending at the defender's instance against the tutor's representatives, and ready to advise; the same *nox liquidandum*. See TUTOR and PUPIL.

Fol. Dic. v. 2. p. 50. Harcarse, (TUTORS & CURATORS.) No 990. p. 279.

1688. February 15. LORD CHANCELLOR *against* BROWN.

No 12.

AN improper wadsetter having given the reverser a back-tack, for payment of a tack-duty equivalent to the annualrent, and upon failure of payment, having apprised the lands for the tack-duties resting owing; and upon that title having uplifted sufficient to extinguish, not only the apprising, but also the wadset sum; this irregular intromission was found not equivalent to real payment, so as to extinguish the wadset, and consequently to hinder the ward to fall by the wadsetter's death.

Fol. Dic. v. 2. p. 51. Harcarse.

* * * This case is No 8. p. 3012, *voce* CONFIRMATION.

1705. January 2. The HEIRS of LEARMONT *against* GORDON.

No 13.

SUPERINTROMISSION was not imputed in extinction of the debt, where the question was with a singular successor, who had acquired an infeftment of annualrent for an onerous cause; for intromission *sine titulo* is not legal payment to operate a real extinction. The debtor has his option to demand payment of the rents from his creditor, as intromitted with *sine titulo*; and if a personal objection lie against the creditor, making the intromission equivalent to payment *quoad* him, but not *quoad* the debtor, this cannot militate against a singular successor. See No 3. p. 9978.

Fol. Dic. v. 2. p. 51.

* * * This case is No 12. p. 574, *voce* ANNUALRENT, INFETMENT OF.

1707. February 27. CAMPBELL *against* MALCOLM MACAULAY.

No 14.

ALEXANDER ROBERTSON couper in Leith, being debtor to Anna Campbell, relict of Adam Gordon, merchant in Leith, in a certain sum; she, for her payment, adjudges from him the right of an heritable bond granted by Macaulay skipper in Leith, to John Leslie, and by him disposed to Robertson her debtor, being 1000 merks; whereupon she pursues Macaulay for payment of her debt,

A party assigned an heritable bond which thereafter was adjudged from the assignee. In a process