

bond, or discharge the debt, but only interposed with him to satisfy such a creditor, by obliging himself to warrant secure the debtor; so that the money paid was not properly the defunct's, seeing the debtor's remained after the payment.

No 80.

THE LORDS assoilzied from the passive title.

Fol. Dic. v. 2. p. 32. Harewise, (HEIRS GESTIO AND PASSIVE TITLES.) No 38. p. 9.

SECT. X.

Serving Heir inchoated, but not completed.

1594. November 26. A. against B.

No 81.

A RETOUR extracted and subscribed by the Sheriff-clerk, albeit it be not past the Chancellory, will prove a man heir to his predecessor *passive*.

Fol. Dic. v. 2. p. 33. Haddington, MS. No 433.

* * Similar decisions were pronounced, 7th December 1621, Clark against Balgony, No 56. p. 2728.; and 16th February 1627, Simpson against Balgony, No 57. p. 2729. *voce* COMPETENT.

1628. November 22. GOOULET against ADAMSON.

No 82.

In an action Goodlet against Adamson, one being convened as heir to his father, and for verifying him to be heir, a sentence and ward of court of the town of Glasgow being produced, whereby he was recognised in their court, by testimony of witnesses, to be eldest son and heir to the defunct; this act was found not to prove him to be heir, albeit it was used to prove *passive* against him; seeing there was no sasine following upon the said act given to the defender produced in this process; for, without sasine had followed upon the act, the same alone was found not to prove, likeas the defender was minor the time of that act; but that was not the cause of the decision, seeing the act stood against him, if it had been otherways in itself lawful, for it was alleged that he had then curators. See PROOF.

A sentence of Court within burgh, whereby the defender was recognised by testimony of witnesses, to be eldest son and heir to the defunct, was found not to prove him to be heir *passive*.

Fol. Dic. v. 2. p. 33. Durie, p. 400.