

No 78.

1629. February 14. DOUGLAS against LAWSON.

IN an action pursued by Henry Douglas against John Lawson, Boghall's brother, whom he pursued as heir to his brother, &c. he verified him to be heir, in so far as Mr Lewis Stuart being infeft in wadset in a tenement in Edinburgh belonging to Boghall, he set a back-tack of the same to Boghall and his heirs, for payment of so much as effeired to his annualrent, of which back-tack duty the said John Lawson had taken discharges from Mr Lewis since his brother's decease.—THE LORDS found this relevant to make him heir.

Fol. Dic. v. 2. p. 32. Spottiswood, (HEIRS.) p. 140.

* * Auchinleck reports this case :

AN apparent heir, who received a discharge of the duties contained in a back-bond, set by a wadsetter to his predecessor, to whom he is apparent heir, is found *gessisse pro herede*.

Auchinleck, MS. p. 3.

No 79.

1632. December 18. A. against B.

IF an executor, being minor, and after the confirmation of the testament become major, and in his majority pay as executor, or transact with any party for a legacy left to them in the said testament, by his deed he undertakes the said testament, and subjects himself to pay the rest of the legacies, so far as the defunct's free gear will extend.

Auchinleck, MS. p. 148.

No 80.

1682. December 16. THOMSON against ANDERSON.

AN apparent heir being convened upon his passive title, that, by a letter to the defunct's debtor, he desired him to pay what he owed the defunct, to one of his, the defunct's creditors, and obliged himself to warrant the payment; because an apparent heir's uplifting heritable debts to pay the defunct's debt, is a behaviour; and any body's uplifting of moveable debts for such an end, is vitious intromission; and the appointing of a debtor to apply the payment such a way, is equivalent to the so uplifting and applying;

Answered for the defender; Intromission only with something in the defunct's possession at his death, doth infer a passive title, which cannot be charged upon the defender, who did not intromit with or give up the debtor's