PART AND PERTINENT.

No. 1. 1753, July 19, Nov. 21. KERR *against* STRUTHERS.

KERR as infeft in the lands and barony of Littledean, comprehending the lands of Maxtoun and Newthorn, pursued reduction and improbation against Struthers of his rights to the lands of Cakemuir and Kirklandside. Alleged, The pursuer produced no infeftment in these lands, and therefore had no title. Answered, They are part to Newthorn; which the defender denied. Woodhall pronounced an act for proving that they are part of Newthorn. By the proof it appeared that they were quite surrounded by the lands of Newthorn except on one side; and when the house or cottage upon the lands became ruinous, that the heritor lived in a cottage in the town of Newthorn, which seemed also to be a part of the defender's land; and since the defender brought no sort of evidence either by charters or infeftments, or even by witnesses, that they were reputed part of another tenement, or held of another superior, but rested his defence, that the pursuer had not proved them part of the barony; the Court thought the situation of the lands sufficient to presume that they were part of Newthorn, and therefore sustained the pursuer's title. 21st November 1753, Altered, and found no sufficient title.

PASSIVE TITLE.

No. 1. 1734, Feb. 6. JAMES and WILLIAM HENDERSON *against* HENDERSON.

THE Lords altered as to kain and coals, and adhered to the Ordinary's interlocutor finding them due, and adhered as to prices, finding the current prices, or prices received.

No. 1736, Feb. 12. LADY RATTER *against* SINCLAIR of Ratter, Her Son.

THE Lords found that apparent-heir, possessing his predecessors estate, without any other title than apparency is not liable to the debts of his immediate predecessor, who died not infeft, but was more than three years in possession, since he was not served heir to his remoter predecessors, nor had an adjudication on his own bond in the terms of the act 1695, 8th January 1736.—*Vide* 12th February *infra*, when the Lords adhered.

After full consideration of the case, and some hearing at the Bar, the Lords (12th February) adhered to their interlocutor of 8th January, most unwillingly, because it

makes the first clause of the act 1695 of little effect; but there were against it Newhall, Justice-Clerk, Haining, Dun.

*** The Lords refused as to the son being liable *in valorum*, but gave the Lady another aliment of L.50 sterling. The answers were in the wrong with respect to the terms of the fund of the aliment.

No. 3. 1736, Feb. 24. JOHNSTONS *against* STEEL of Bowerhouses.

ON the interpretation of the word "possession" in the act 1695, anent fraud of apparent-heirs, the subject being an improper wadset with a back-tack, Lord Haining, Ordinary, having found that the reverser's possession was the possession of the wadsetter's apparent-heir, and that the liferenter's possession was also the apparent-heir's possession,—the Lords altered the interlocutor, and found the heir's possession of the back-tack duty relevant to subject the next heirs to his onerous debts and deeds, and found the liferenter's possession not relevant. They waved determining, Whether the assignee of the apparent-heir's possession was relevant.—18th December, 1733.

The Lords found possession of the back-tack relevant; 2dly, As to the 400 merks, remitted to the Ordinary. 3dly, Repelled. 4thly, Found possession must be proved. 5thly, Found the userenter's possession not sufficient.—23d January 1734.

The Lords found sufficient evidence of George Johnston's possession. We thought, both that there was no need *post tantum temporis* to prove the nomination, and though there had been no nomination, yet possession being *facti*, they thought a protutor's possession sufficient.—24th February 1736.

*** The case Boyle against M'Aul, 26th June 1745, here referred to, is thus mentioned:

The Lords gave the like interlocutor, as 23d January 1734 and 24th February 1736, Johnston against Steel, and refused a reclaiming bill against Arniston's interlocutor, and adhered unanimously.

No. 4. 1736, June 16. M'BRAIR of Netherwood *against* MAITLANDS.

THE Lords adhered to the Ordinary's interlocutor, finding the daughters not liable, in respect they got not payment out of their father's estate, 19th February 1736.—16th June, Adhered unanimously, except Drummore and the President.

No. 5. 1741, Dec. 9. LEITH *against* LORD BANFF.

HERE the question again occurred on the act 1695, Whether an apparent-heir not serving heir to a remote predecessor, passing by an immediate one, but possessing without making up any title, falls under that act, and is liable for the former apparent-heir's debts, who had been three years in possession, a point that had been determined upon a hearing, 8th January and 12th February 1736, Lady Ratter against her son; and Mr Craigie mentioned another, decided the same way in 1725 or 1726, Backie against