

PERSONAL AND TRANSMISSIBLE.

1746. July 17. M'FARLANE *against* GRAHAM of Killearn.

No. 1.

PENAL ACTIONS *non transeunt in hæredes*, though they be *rei prosecu- toriæ ex parte actoris*, and therefore an action of oppression being pursued against the last Killearn, but continued because of an intended submission, was found not transferable against his heir, because not *litiscontestate* against the defunct. *Vide* 22d November 1737, Hume against Hume, *voce* PROCESS. *Vide* 30th November 1744, Wilson, *voce* FRAUD.

1751. January 22. HEPBURN *against* M'LACHLAN.

No. 2.

IN 1745 the Laird of M'Lachlan being sent with a party to East Lothian to levy Cess for the Rebels, and Hepburn of Kingston refusing to pay, M'Lachlan took him prisoner, broke open his cabinets, where he found L.740 sterling in cash, and took it away, and afterwards sent to him, at least sent to Congalton for him, the young Pretender's bond for the money, payable when he should arrive at St James's;—and M'Lachlan was afterwards killed at the battle of Culloden, and therefore not attainted of treason;—and now Scot Hepburn, heir and executor to Kingston, sued M'Lachlan's heir for the money, and a proof being led, the defence at advising was *ex parte rei mere penalis*, and therefore *non transit in hæredes*. But the Lords unanimously repelled the defence, and found him liable not only for the principal sum, but also for interest and expences. *Vide inter eosdem voce* PACTUM ILLICITUM.

See NOTES.

PERSONAL OBJECTION.

1734. June 25. GRAY and CORBET *against* GRAY.

No. 1.

EXCEPTIO FALSI OMNIUM ULTIMA.—After a suspender had undertaken to improve a writ and consign the L.40, and the charger had abidden by the writ, the suspender was not allowed to recur to other reasons of suspension. (See PROCESS.)

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