

and would be compelled by law to restore the duties of the said lands to the heritor thereof, and so reaped no benefit by his father; this exception and duply was sustained by the LORDS, that the defender should not be holden as heir; albeit the pursuer *answered*, That once the defender had entered to these lands, which were brüiked by his father the time of his decease, *per tacitam relocationem*, he being tacksman thereof before, by the which entry the defender having no right otherways behoved to enter as successor to his father; and there was no decret of improbation, but which was only obtained since the defender's father's decease, against the defender's self, and was neyer intended against his father, and so cannot purge the defender's entry after his father's decease, and before that decret of improbation, and which cannot make him cease to have succeeded therein to his father. Likeas, notwithstanding of that decret, he hath thereafter still intromitted with the profits and duties of the same lands. Which answer was not respected, but the exception and duply sustained, as said is, seeing the decret foresaid would make the defendèr accountable for his intromission with the said lands, and so he could not there-through be reputed heir. See PASSIVE TITLE.

No 152.

Durie, p. 367.

1630. July 22.

FARQUHAR against CAMPBELL.

ROBERT FARQUHAR pursues George Campbell of One Sleuch, heir, or at least lawfully charged to enter heir to umquhile John his father, for sums of money addebted by the defunct to the pursuer. The defender offers to renounce.—It is *replied*, That he cannot, because it is offered to be proved, that since the decease of his father, he hath behaved himself as heir, by intromission with his father's heirship goods and gear, and forms of rooms and possessions possessed by his father.—It is *duplied*, That any intromission can be alleged against him, was by his tutors in his minority, and he was now content to restore the same; which reply the LORDS found relevant.

No 153.

Auchinleck, MS. p. 133.

1631. March 10.

LA. HADDO against L. LUDQUHARN.

THE Laird of Haddo's forbears wadsetting some lands to Mr Thomas Davidson, redeemable by payment of 5000 merks, and the said Mr Thomas having pursued upon that infestment the tenants of the lands for payment of the duties thereof; in which cause the L. Ludquharn, curator to Haddo, compearing to defend the tenants, he taking burden upon him for Haddo and the said Mr Thomas, submitting themselves amicably to two of the Lords of Session, who by their decret decerned Ludquharn to pay to Mr Thomas the said principal

No 154.
A minor restored against a wadset, consigning only the principal sum, although his curator, who, by transaction with the wad-