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 PART AND PERTINENT.
 

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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.

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 PASSIVE TITLE.
 

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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