

PAPIST.

1741. *February 25.* STEWART *against* MR JOHN WEBSTER.

No. 1.

ONE letting a tack to a Papist knowing him to be such, found not barred *personali exceptione* from reducing the tack on the act 1700 for preventing the growth of popery. *2do*, Found that removing may be pursued against such a tenant without any formal process of reduction.

MAXWELL of Dalswinton *against* MAXWELL of Barneleugh.

No. 2.

PROTESTANT-HEIR,—the Lords were greatly divided, whether adjudication could be led against him on a charge to enter heir, or if he can make up a title any other way than by service and entry in the lands. There were two questions, *1st*, That point of law; *2dly*, Whether that was not already overruled; and first, they without determining either, sustained the adjudger's title, 22d January 1740; but afterwards found the objection competent; and thereafter sustained the title, upon its appearing that the Protestant heir was now heir of blood, and served, and concurred, and upon a sort of bargain at the Bar.

See NOTES.

PART AND PERTINENT.

1753. *November 21.* KERR *against* STRUTHERS.

No. 1.

KERR of Littledean pursued reduction and improbation against Struthers of his rights of the lands of Cakemuir, as part and pertinent of Newthorn, part of the Barony of Littledean, whereof he produced the infestments. The

- No. 1. defender denied that they were part and pertinent of Newthorn, and an act before answer was pronounced. By the proof, it appeared that the defender's lands were but a small piece of ground surrounded on all sides except one, by the pursuer's lands of Newthorn, having now no house upon it, and when the cottage that was on it became ruinous, that the heritor lived in a cottage in Newthorn, which seemed also to be part of these lands. Because the defender brought no sort of proof of its being held of another superior, nor of its being a separate tenement, or part of another tenement, either by writing or by parole evidence, but rested his defence on denying its being part of the pursuer's Barony, the Court found sufficient evidence to presume that it was part of the pursuer's Barony, and therefore sustained his title, 19th July 1753. Altered, 21st November, and found no sufficient title.

See NOTES.