

PASSIVE TITLE.

DIVISION I.

Behaviour as Heir.

SECT. I.

Relates only to the Apparent Heir.

1618. *June 11.* HALIBURTON *against* LORD BALMERINOCHE.

No 1.

IN an action betwixt Haliburton and my Lord Balmerinoch, the LORDS found the Lord Balmerinoch could not be convened as successor to his father, because he was forfault, and the gratuitous restitution made him capable of rights disponed, but could not make him heir to any but to the Prince.

Kerse, MS. fol. 142.

1626. *December 21.* IRVINE *against* L. MONYMUSK.

No 2.

IN an action pursued by Irvine *contra* L. Monymusk, who was convened to pay a debt owing by his father, as behaving himself as heir to him; in this manner qualified, viz. in so far as, the pursuer offered to prove, that Monymusk had sold a tenement of land since the decease of his father, in the which land his father had died last infest and seised; which qualification was repelled, in respect of this exception proponed, viz. that the defender, the time when he sold this land, had then an elder brother living, so that, *per rerum naturam*, he could not then have been heir to his father, and so that deed could not make him to be heir, there being another then living who would have been heir. This

Behaviour not inferred from a second son selling land belonging to his father, tho' his eldest brother was an idiot declared, and he was his curator, and had got the price,