

1697. February 16. EARL OF TWEEDDALE *against* DURY of Craighlascair.

No 148.

In a process upon the passive titles, an heir founding his defence on partial payments by the predecessors, was not afterward allowed to deny the passive titles.

MERSINGTON reported the Earl of Tweeddale, Chancellor, *contra* Dury of Craighlascair. The question was, he being a vassal of the regality of Dunfermline, if he was liable in the Sheriff fiars, as the price of his teinds, or in the regality fiars, which are much dearer? The Chancellor founded on a decret he had obtained against Fotheringham of Halhill.—*Answered*, This vassal Craighlascair is in another case, because he has a decret of the commission for plantations, finding him only liable in the Exchequer prices.—*Alleged*, This was before Dunfermline got the tack.—THE LORDS resolved to hear this farther.

THE LORDS found, in the process at the instance of the Marquis of Tweeddale against Dury of Craighlascair, that one having denied the passive titles, and yet afterwards producing discharges of the teind-duties granted to his father during the time of his possession of the lands, his founding thereon was a sufficient acknowledgment of the passive titles; for an apparent heir has no interest to propone payment by his predecessor whom he may represent; but he may found on payment made to singular successors who were his authors in the land, or he may propone falsehood of any writ alleged signed by any of his predecessors; for that only denies they granted any such paper.

Fol. Dic. v. 2. p. 187. Fountainhall, v. 1. p. 661. & 767.

* * The like was found, where the partial payment was proponed in a declarator of extinction;—see APPENDIX, July 1729, Johnston against Logan.

1697. June 18. Mr JAMES STUART *against* The LAIRD of LAMONT, &c.

No 149.

A party pursued on the passive titles, not allowed to allege prescription of the debt, denying the passive titles.

IN a pursuit by Mr James Stuart of Chreswal, Advocate, against the Laird of Lamont, and others, it came to be debated, if an apparent heir can propone the defence of prescription, and yet deny the passive titles.—It was *alleged*, It was only *exceptio impeditiva litis ingressus*, and not properly a peremptor.—*Answered*, Prescription is as much *inter modos tollendi obligationem*, as either payment or compensation; and after you have kept me a year in proving interruption, it were unreasonable to permit him to recur to a denial of the passive titles.—THE LORDS found prescription such a peremptor as inferred, by proponing thereof, an acknowledgment of the passive titles.

Fol. Dic. v. 2. p. 187. Fountainhall, v. 1. p. 777.