

No 65.

as to the question now before the Court, whether it should be extended to the objecting of a nullity, it was new and the rule had never yet been so far extended.

It was on the other hand said, That where no proof was necessary, the defender might safely object a nullity appearing *ex facie* of the deed; but that no man could, without acknowledging the passive titles, put the other party to a proof.

All however agreed to allow the petition to be seen; and upon advising the petition with the answers, wherein there was nothing new said, the LORDS, without further argument, 'found that the proponing the said defence was not an acknowledgment of the passive titles, and remitted to the Ordinary to proceed accordingly.'

*Fol. Dic. v. 4. p. 43. Kilkeiran, (PASSIVE TITLE.) No 4. p. 368.*

No 66.

1743. July 2.

HUTCHISON *against* MENZIES.

HUTCHISON obtained decree in absence, against Menzies of Troloss, to whose oath the passive titles having been referred, he did not depone. Menzies raised a reduction of the decree, wherein a proof of the passive titles was allowed, and accordingly a disposition was recovered, by which Menzies, under the character of apparent heir, disposed the estate belonging to his father, to trustees, for behoof of his creditors. He thereby also bound himself to make up his titles, and gave the trustees full power to infest him. He delivered over to them the writs in his possession, and empowered them to pursue for the rest. And lastly, he took the trustees bound for the surplus after payment of the creditors. In the end of the disposition he declared, that this deed was by no means to subject him personally, or his other estate, to pay of his father's creditors. THE LORDS found the disposition a passive title.—See APPENDIX.

*Fol. Dic. v. 4. p. 42.*

No 67.

Whether, although a decree had been pronounced *declaratorie*, finding a person liable on the passive titles, he could be distressed on a bond?

1745. January 29.

ELIZABETH RAMSAY *against* The CREDITORS of CLAPPERTON of Wylliecleugh.

BOTH parties in this question founded on apprisings affecting the lands of Easter-Wylliecleugh, and mutually objected to each others titles, Elizabeth Ramsay the heiress of the family, on an apprising deduced by Hope-pringle of Torsonce, 4th June 1645, which was now in her person, and the Creditors of the deceast Richard Clapperton on one deduced by Alexander Kennier, which came into the person of a predecessor of their debtor.