

HEIR AND EXECUTOR.

SECT. I.

Rights of the Heir.

1557. *March.* COLLINGTON *against* JOHNSTON.

ANENT the action persewit be the Laird of Collington against G. Johnston, upon ane act of adjournal, for the spulzie committit be the said G. upon the said Laird, it was *allegit* be the said G. That the said Laird had na interest to persew the said action as heir to his father, because the said action was upon moveable gear, and pertained to the executors, and not to the heir.—It was *replied* be the said Laird; That he had good action to persew as heir, because year and day was past, and the action unpersewed be the executors; likeas any might have persewit the said Laird as heir, year and day being past; whilk reply was admittit be the LORDS.

Fol. Dic. v. 1. p. 356. Maitland, MS. p. 121.

No 1.
An action of spulzie at the instance of an heir was sustained, though the goods spulzied were moveable; because year and day were past, and no action raised by the executor.

1609. *January 28.* SIR D. WOOD *against* LADY BONNINGTON.

IN an improbation pursued by Sir David Wood against his mother, the Lady Bonnington, of his father's testament, the LORDS found that the defunct's heir has good interest to improve the nomination of an irresponsal executor; because, if the moveables be wasted, the debts will come upon the heir.

Fol. Dic. v. 1. p. 356. Haddington, MS. No 1552.

No 2.