bond, or discharge the debt, but only interposed with him to satisfy such a creditor, by obliging himself to warrant secure the debtor; so that the money paid was not properly the defunct's, seeing the debtor's remained after the payment. No 80.

THE LORDS assoilzied from the passive title.

Fol. Dic. v. 2. p. 32. Harcarse, (HEIRS GESTIO and PASSIVE TITLES.) *No 38. p. 9.*

SECT. X.

Serving Heir inchoated, but not completed.

1594. *November* 26. A. *against* B. No 81.

A RETOUR extracted and subscribed by the Sheriff-clerk, albeit it be not past the Chancellory, will prove a man heir to his predecessor *passive.*

Fol. Dic. v. 2. p. 33. Haddington, MS. No 433.

*** Similar decisions were pronounced, 7th December 1621, Clark against Balgony, No 56. p. 2728.; and 16th February 1627, Simpson against Balgony, No 57. p. 2729. *voce* COMPETENT.

1628. *November* 22. GOODLET *against* ADAMSON.

No 82.
A sentence of Court within burgh, whereby the defender was recognosced by testimony of witnesses, to be eldest son and heir to the defunct, was found not to prove him to be heir *passive.*

IN an action Goodlet against Adamson, one being convened as heir to his father, and for verifying him to be heir, a sentence and ward of court of the town of Glasgow being produced, whereby he was recognosced in their court, by testimony of witnesses, to be eldest son and heir to the defunct; this act was found not to prove him to be heir, albeit it was used to prove *passive* against him; seeing there was no sasine following upon the said act given to the defender produced in this process; for, without sasine had followed upon the act, the same alone was found not to prove, likeas the defender was minor the time of that act; but that was not the cause of the decision, seeing the act stood against him, if it had been otherways in itself lawful, for it was alleged that he had then curators. See PROOF.

Fol. Dic. v. 2. p. 33. Durie, p. 400.

*** Spottiswood reports this case:

No 82.

In an action of registration pursued by N. Goodlet against John Adamson, as heir to his father, the pursuer produced to verify the defender to be heir, an act of court of the Bailies of St Andrews, bearing, that, by sentence and ward of court, John Adamson was recognosced to be heir to his father James, whereupon the said John's procurator asked instruments.—The Lords thought not this sufficient to prove one heir, thereby to infer any action against him.

Spottiswood, (Heirs.) *p.* 139.

No 83.

1670. *June* 28. Elies *against* Carse.

The taking out brieves from the Chancery, in order to serve heir, was found not a behaviour, the same not having been followed out.

Stair. Gosford.

*** This case is No 27. p. 9668.

SECT. XI.

Behaviour upon Act of Sederunt 1662.

No 84.

An apparent heir having granted a simulate bond, in order to lead an adjudication of his predecessor's estate, his intromission, by virtue of this title, was not reckoned a behaviour, being *singulari titulo*, and not as heir.

1662. *January* 22. Glendonwyne *against* The Earl of Nithsdale.

George Glendinning pursues the Earl of Nithsdale, as lawfully charged to enter heir to his father, for fulfilling his father's bond. It was *excepted*, That the Earl was content to renounce. It was *answered*, That he could not renounce; because he had given bond to the Earl of Dirleton, whereupon, to his own behoof, his father's estate was adjudged from him; to which adjudication the defender was assigned by Dirleton, and he thereupon infeft, and in possession. It was *replied*, That the defender might nevertheless renounce; because nothing could hinder him but *gestio pro hærede*, or some other passive title, which, by the law of Scotland, could make him heir, or behaving himself as heir, &c. But so it is, that the granting of the foresaid bond is not such a passive title; but, on the contrary, implies a direct mind, that he intends not