

1631. *January 26.* LD. GADGIRTH *against* LD. AUCHINLECK.

A DECREE in a process, finding upon probation, a man heir to his father *passive*, as having intromitted with the heirship goods, was found no probation of that passive title in a new process at another party's instance; the defender alleging in this new process, that his father was such a person as could not have an heir; which allegiance was omitted to be proponed in the first.

Fol. Dic. v. 2. p. 347. Durie.

* * * This case is No 58. p. 9709., *voce* PASSIVE TITLE.

No 11.

1632. *January 25.* KAIDISLIE OF ANDERSON *against* LAWDER of Whitslaid.

THE said Lawder being convened as heir to his father, for payment of a sum contained in his father's bond; and for verifying him to be heir, a decret being produced, given at another party's instance against the same defender, being then pursued as heir to his father, by the which decret he is decerned as heir to him, being found proved by production of a sasine given to him as heir to his father; which decret proceeding upon the said probation, the LORDS found proved this party heir in this process, and that there was no necessity to produce the sasine, nor any other writ, except the said decret, to prove him heir, so long as the said decret stood unreduced; albeit the defender *alleged*, That that decret was given against him, being absent, and for not compearance, and that deducta in uno processu non probant in alio, et res inter alios judicata aliis non nocet, and that if the party will produce the sasine used in the other process, he will offer to improve the same; for he alleged that there was never such a sasine; which allegiance was repelled, in respect of the said decret, which behoved to prove, ay and while the same were reduced, and the manner whereby it was there found proved taken away.

Act. Hart.

Alt. Burnet.

Clerk, Gibson.

Fol. Dic. v. 2. p. 347. Durie, p. 614.

No 12.

A party to verify another to be heir to his father, produced a decret at a third party's instance against him which bore, production of a sasine in his favour as heir. Found sufficient evidence, altho' the decret had been in absence.

* * * Spottiswood reports this case :

1632. *July 25.*—IN an action of registration pursued by Margaret Anderson against Gilbert Lawder of Whitslaid, as heir to his father; for verifying him to be heir she produced a decret obtained against him as heir to his father, at the instance of Richard Lawder, and that by production of a sasine of a tenement in Lawder, given to the said Gilbert as heir to his father, which sasine the decret bore to have been produced. *Alleged*, That decret was obtained for non