

clause in the foresaid act of Parliament, which the pursuer desires no review of. Yea, there is nothing more ordinary than to libel not only several conclusions in one summons, but also separate actions; and, as insisting in one of such accumulative actions cannot hinder to insist in the other; far less can the insisting particularly upon one of several *media concludendi*, in one summons, cut off the rest. *2do*, It is unnecessary to answer the defender's citations out of the civil law, since the form of process among the Romans differs from ours. And the citations out of Hope and my Lord Stair, about the effect of litiscontestation, doth only concern what is litiscontestate, which the pursuer doth not quarrel.

THE LORDS found, that the pursuer may yet insist upon the other passive titles; and remitted to the Ordinary to hear parties thereon.—*See PROCESS.*

Forbes, p. 405. & 476.

No 88.

1714. November 24. THOMAS MERCER against ROBERT LEITH.

THOMAS MERCER pursues Robert Leith, as representing James Leith his father, for payment of the sums contained in two bonds, granted by Dickson of Westbinnie, Mr John Montgomery, and the said James Leith, to which the pursuer has right by progress; and insisted on this passive title, that the defender accepted a disposition from his father to certain heritable sums of money, and thereby became liable conform to the act of Parliament 1695; which the Ordinary having sustained, the defender offered a reclaiming bill, on these reasons; *1mo*, The defender's father's disposition was only an inconsiderable heritable sum; *2do*, The act of Parliament relates only to purchases made by apparent heirs, that is, heirs to whom the succession is devolved by the death of his predecessor: Although the acquisition had been from a stranger, and to a much more valuable right, made in the father's lifetime, it would not have been in the case of the act of Parliament, which bears. 'That if any apparent heir without being lawfully served, &c.' which, and all the cases there related do only concern apparent heirs to whom the succession is devolved. And the act of Parliament 1661, prorogating the legal of apprisings purchased by apparent heirs, was never extended to such purchases made in the lifetime of the predecessor. It is true, in the case the 7th June 1710, Watson against Alexander Brown, No 88. p. 9743. observed by Mr Forbes, it was otherwise found; but that decision is marked very short, and being the interpretation of a correctory law, deserves to be the more maturely considered.

It was answered; The disposition made by the defender's father, is not of a small subject, but of many sums, and indeed the substance of what his father had, and reserving his father's liferent; so that although the acquisition was in his father's time, yet the possession was calculated to begin after his father's de-

No 89.

An apparent heir accepting a disposition to heritable sums from his father, found liable to his father's creditor, conform to the 24th act, Parl. 1695.

No 89.

cease, when the succession was devolved to him, which falls clearly under the words of the 24th act of Parliament 1695, declaring, that an apparent heir entering to possess his predecessors estate, or purchasing any right thereto otherwise than by a public roup, shall be liable as if he were heir served: and if it were otherwise the act of Parliament would be easily eluded, either by acquiring a disposition from the predecessor and pretending an onerous cause, as in this case, which strangers could not disprove, or by acquiring rights from third parties in the father's lifetime; and the Lords in the interpretation of all laws do consider the design of the law, which they will not suffer to be evaded by the contrivances of apparent heirs; and thus it was found in the case of Watson against Brown upon full debate, and very unanimously, and a reclaiming bill refused; and for the same reason the right of an expired comprising acquired by an apparent heir in his father's lifetime, was found to be redeemable at the instance of his father's creditors upon the act of Parliament 1661, 19th June 1668, Burnet of Carllops against Nasmyth, No 48. p. 5302.

THE LORDS repelled the defence.

Fol. Dic. v. 2. p. 34. Dalrymple, No 117. p. 164.

1745. June 26.

CREDITORS OF M'CAUL against M'CAUL.

No 90.

THE liferenter's possession found not to be the fiar's possession in the sense of the act 1695, not only as it is a corrective law *et stricta interpretationis*, but for this more special reason, That in no case the possession of the liferenter is held to be the possession of the fiar, but where the liferenter's possession tends to the fiar's benefit, as where prescription runs in his favour by the liferenter's possession, or the like.

Kilkerran, (PASSIVE TITLE.) No 7. p. 371.

* * D. Falconer reports this case.

1745. June 25.—HENRY M'CAUL merchant in Glasgow, married Janet Cliemy daughter and heiress of James Cliemy merchant there, and she in their contract of marriage disposed to him certain tenements in Glasgow, reserving to her mother her liferent thereof; but there were no titles made up in the person of Janet Cliemy, who predeceast her mother or her husband.

After Henry M'Caul's death, his creditors pursued John M'Caul his son, and adjudged from him both his father's proper estate, and what had come by his mother.

He raised a reduction, on the head of minority, of the decreets finding him personally liable, offering yet to renounce, and likeways of the adjudications of the subjects belonging to his mother; and the Lord Ordinary, 12th December 1744. " Found the reasons of reduction on the head of minority and le-