

1736. *February 24.* JOHNSTONS *against* STEEL of Bowerhouses.

No. 3.

PASSIVE TITLE of passing by on the act 1695, though a tacksman's possession is the heritor's possession, yet it is (in the construction of the act) the possession of the apparent-heir, and therefore a reverser's possession of wadset lands by a back-tack is not the possession of the wadsetter's apparent-heir; but his uplifting the back-tack duties is possession. *2do*, Neither is the possession of the liferentrix the relict of the last heritor the possession of the apparent-heir; no, nor even the possession of the relict of the apparent-heir who attained possession upon his personal obligation. *3tio*, A minor possessing will bind the next heir passing by him, because a minor might have entered, therefore minority makes no difference, 18th December 1733, 23d January 1734, 24th February 1736. (See DICT. No. 140. p. 9809.)

* * * The same found 26th June 1745, Boyle *against* M'AUL.

No. 4.

1736. *June 16.* M'BRAIR of Netherwood *against* MATTLANDS.

ONE having granted bonds of provision to his five daughters in full satisfaction of their succession to his estate heritable or moveable, they after his death assigned them to his brother and heir-male, and got his bonds for the money, who thereupon purchased in the other debts, and adjudged the estate from the daughters, as charged to enter heir to their father, and thereupon entered to possession; and some years thereafter gave the daughters an obligation to relieve them of all their father's debts containing the condition, "they always granting renunciations to enter heir to their predecessors in my favour when required." These daughters being pursued by a creditor of the father's on the passive titles, particularly the sums in these bonds of provision paid them by their uncle as being in effect the price they got for the succession to the estate; the Lords found the defenders not liable, in regard they did not get payment of these provisions out of their father's estate.

The three years possession by an infant's tutor is sufficient. *2do*, No necessity to produce the nomination of tutors so old as 1692. *3tio*, Possession even by pro-tutors was thought sufficient. (See DICT. No. 212. p. 9889.)