

THE LORDS, (27th January 1796), sustained the reasons of reduction, and found the defender liable in repetition of what she had recovered out of her father's estate. No 247.

And upon advising a petition, with answers, they "adhered."

Lord Ordinary, *Monboddo*. Act. *D. Cathcart*. Alt. *M. Ross*. Clerk, *Menzies*.
D. D. *Fac. Col. No 220. p. 516.*

DIVISION IX.

Rights when presumed simulate.

SECT. I.

Disposition of moveables *retenta possessione*.

1630. *January 30.* CALDERWOOD *against* PORTEOUS.

No 248.

IN a process upon the passive titles, the defender acknowledged his intromission with the heirship moveables, but that it was in virtue of a disposition from his father. *Objected*, That the disposition was null, *retenta possessione*. The LORDS sustained the answer, that the father and son lived in the same house, and that it must be reputed the son's possession, he being married, and the father old and infirm and a widower.

Fol. Dic. v. 2. p. 156.

*** This case is No 39. p. 9681, *voce* PASSIVE TITLE.

1662. *June* . BOWIS *against* BARCLAY of Johnstoun.

ROBERT BOWIS *alleging*, that John Wood was debtor to him in a certain sum of money, as cautioner for John Strachan of Haugh-head, and having arrested certain goods in the hands of John Barclay of Johnstoun, pursues to make the arrested goods furthcoming. It was *excepted* by the defender, That the goods No 249.