

onerous, yet destinations to heirs or bairns are not so, and do not hinder but a disposition to an eldest son makes him successor *titulo lucrativo*. *Vid.* 29th November 1678, Higgens, No 125. p. 9795. ; and 22d February 1681, More, No 116. p. 9781. ; and Dirleton, *voce Successor titulo lucrativo*. THE LORDS found though Harry had the first complete right, yet seeing he was thereby heir and successor, he became liable to warrant his father's deed, in favour of the Carses, and so could not quarrel nor impugn the same ; and therefore reduced his right, and preferred the first disposition made by Edward to the Carses, his grandchildren, before Harry's subsequent right, though first perfected by infestment.

No 126.

Fountainball, v. 2. p. 292.

S E C T. III.

The Debt must be anterior to the Disposition.—What understood to be an Anterior Debt.

1634. *January 14.*

OGILVIE against Ld MENSIR.

SIR GEORGE OGILVIE of Carnossie, as executor dative *ad omnia* confirmed to his father, sought a decret of violent profits obtained by his father against umquhile Alexander Fraser of Mensir, to be transferred in himself *active* as executor foresaid, and *passive* in Alexander Fraser, son to the said umquhile Alexander, to whom he was successor *titulo lucrativo* in the said lands of Mensir. *Alleged*, No transferring against the defender as successor, &c. because offered to be proven, that if any way he succeeded to the said lands of Mensir, it was by virtue of his contract of marriage, whereby his father was bound to infest him in the same ; which contract was long before the decret of violence, and so he cannot be convened as successor *titulo lucrativo post contractum debitum*, seeing the decret of violence is the only ground whereupon he is pursued. *Replied*, That ought to be repelled, except he would allege that the contract was before the decret of removing and warning, whereupon the decret of violence followed, and to which warning and decret of removing following on it, the said decret of violence ought to be drawn back ; for the defender was constituted debtor by the said decret of removing. *Duplied*, The decret of violence is the only ground that makes the defender debtor to the pursuer, because

No 127.

A decret of violent profits against a father, after the disposition by him to his eldest son, was drawn back to a decret of removing, which was before the disposition, in order to be the foundation of a passive title ; because the decret of violent profits was a consequence of the other.

No 127. it liquidates the decret of removing. THE LORDS would not sustain the allegiance as it was proponed, except he would say as in the reply.

Fol. Dic. v. 2. p. 37. Spottiswood, (SUCCESSORS and SUCCESSION), p. 315.

* * * Auchinleck reports this case :

THE Laird of Carnossie pursued Alexander Fraser, as successor to umquhile Alexander Fraser of Mensir his father *titulo lucrativo*, for making payment to him of the violent profits contained in a decret obtained by Carnossie's father against the defender's father. It was excepted by Alexander Fraser, that he cannot be convened as successor to his father in the land of Mensir, because he was infest by his father therein upon his contract of marriage, which contract was made before any decret of violent profits was obtained. To which it was *replied*, That the exception ought to be repelled, except it were *alleged*, that the contract of marriage was before the decret of removing, whereupon the decret of violence followed ; for by the decret of removing, his father was constituted debtor, and the decret of violence was only a liquidation of the debt which depended upon the decret of removing. Which reply the LORDS found relevant.

Auchinleck, MS. p. 4.

No 128.

1637. February 23. LIGHTON against L. KINABER.

If a disposition be before the existence of the debt though infestment be after, there is no room for the passive title.

* * * See this case, No 106. p. 9772.

No 129.

A son as lucrative successor *post contractum de bitum*, was found obliged to enter heir to his father the wadsetter, in order to resign in favour of the reverser, because there was an obligation in the wadset to resign upon payment, which was before the

1668. January 14.

EARL of KINGHORN against The LAIRD of UDNEY.

THE Earl of Kinghorn did wadset to the deceast Laird of Udney the barony of Balhaves, and the sum due upon the wadset being paid to Udney, he did by his letter to the said Earl, promise a renunciation of the said wadset to be granted by him. The Earl of Kinghorn as heir to his father, having pursued the now Laird of Udney as representing his father upon the passive titles, and especially upon that, as successor *titulo lucrativo*, in so far as he was infest in the lands condescended upon acquired by his father to himself in liferent, and to the defender in fee, with power to the father or his assignee to redeem the same upon payment of three pounds, and to set, wadset, and dispone without his consent ; it was *alleged*, the sons right was prior to the said letter, and that the father did not make use of the said power. It was *replied*, That the wad-