

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-