

1639. *January 29.*LA. SMEITON *against* L. SMEITON.

## No 107.

In a case similar to Forbes *against* Fullerton, No 106. p. 9771. the grandson *fiar*, after the death of his father, the liferenter, was found lucrative successor.

THE Lady Smeiton pursues registration of a contract of marriage, made betwixt umquhile James Richardson of Smeiton her son, and Rachel Wardlaw his spouse, whereby her umquhile husband, father to the said umquhile James their son, provided the pursuer to her liferent of the lands of Smeiton, in recompence of the lands of Wallieford, which she being provided unto, renounced in favours of her said son; for registration whereof she pursues James Richardson, now of Smeiton, oye to her umquhile husband, as successor to his goodsir *post contractum debitum*. And it being *alleged*, That he could not be convened as universal successor to his goodsir, because the time of the acquiring of that right from his goodsir, his father was then living, who was then apparent heir to the defender's goodsir, and so he can never be reputed, nor convened as universal successor, his father being on life; the LORDS repelled this exceptton, in respect of the infestment of the lands, granted after the contract of marriage, whereby this pursuer was provided to her liferent, as said is, and was given by the goodsir to the defender his oye, with reservation of the liferent to the defender's father, so that the goodsir and the father contracting together to infest the oye in fee, and providing the father to the liferent, the LORDS found this sufficient to make the oye successor to his goodsir, albeit then the oye had his father on life, who was *in linea recta* apparent heir before the oye, which was found no impediment to exclude this pursuit; but that the same should be sustained against the oye as universal successor, otherways all just creditors might be fraudulently elided.

Act. ———.

Alt. *Nicolson*, younger.Clerk, *Scot*.*Fol. Dic. v. 2. p. 35. Durie, p. 870.*1662. *January 14.*NICOL HARPER *against* HOME of Plandergaist.

## No 108.

One granted a disposition in trust for behoof of his apparent heir, which was afterwards conveyed to the heir. He was found liable only *in valorem* on the act 1621.

NICOL HARPER pursues Colonel John Home of Plandergaist, for payment of a debt of umquhile Home of Plandergaist his brother, and condescends, that the defender hath behaved himself as heir, at least successor lucrative to his brother, in so far as his brother disposed the lands of Plandergaist to William Home of Linthil, to the behoof of the defender, then his apparent heir, whereupon the defender is now in possession. The defender *alleged, Non relevat*, to infer this passive title, unless the disposition had been to the defender himself, or that he had thereupon been infest; but a third party only being in the real right, and the defunct denuded before his death, albeit there was a personal obligation of trust in favours of the apparent heir, if that cannot make him lucrative successor, but the pursuer may reduce the same, if it was without cause onerous.