

apparent heir being alive, could not, be such a title against the person, receiver of the disposition, as to make him liable *passive* for payment of the debt. No 110.

*Newbyth, MS. p. 40.*

\* \* Stair's report of this case is No 19. p. 3571, *voce* DISCUSSION.

1665. December 2. EDWARD EDGAR *against* COLVIL.

EDWARD EDGAR pursues ——— Colvil, successor lucrative to his father, Mr Alexander Colvil, in so far as he accepted an assignation of an heritable bond, unto which bond he would have succeeded as heir. It was *answered*, That this passive title was never extended to bonds of provision granted by a father to his eldest son; and if in security and satisfaction of such a bond of provision, an assignation of a debt due to the father and his heirs were granted, it could not infer an universal title to make the acceptor liable to his predecessor's whole debt, so neither can an assignation to a bond, which is no more in effect, and such odious passive titles are not to be extended, but the pursuer may reduce upon the act of Parliament 1621, or at the farthest, may crave by this process the simple avail of what the defender hath intromitted with by virtue of the assignation.

THE LORDS found the condescendence relevant, as being *præceptio hæreditatis*; and as an assignation to a tack or a small annualrent, hath been found sufficient, so there is like or more reason for assignations to heritable bonds, which may be more easily conveyed away from creditors; but they found it not alike as to bonds of provision whereby the father became debtor, and in satisfaction and security whereof he might assign, and would only import single payment, but not an universal passive title.

*Fol. Dic. v. 2. p. 36. Stair, v. 1. p. 319.*

\* \* Newbyth reports this case :

EDWARD EDGAR being a creditor to unquhile Mr Alexander Colvil of Blair in the sum of 3000 merks, pursues the relict as vitious intromissatrix with the defunct's goods and gear, and his bairns upon the passive titles *alternative* libelled, and insisted upon that passive title against the apparent heir as successor *titulo lucrativo post contractum debitum* by his acceptation of rights, not only of lands, but of heritable bonds and sums of money thereby due, which ought to infer that passive title against him who is *alioqui successurus*. THE LORDS found a disposition or assignation to be an heritable debt granted by the father to the son, sufficient to make the son liable as successor *titulo lucrativo post con-*

No 111.  
Lucrative  
succession in-  
ferred by an  
assignation of  
an heritable  
bond by a fa-  
ther to his  
eldest son who  
would have  
succeeded him  
as heir there-  
in.

No III. *tractum debitum*. and so to make him liable for all his father's debts; notwithstanding it was *alleged*, That the said passive title can only be inferred from the acceptance of such rights whereupon infestment had followed, but not for any other rights whereupon there was no infestment.

*Newbyth, MS. p. 42.*

1666. July 3. EARL OF KINGHORN *against* LAIRD OF UDNEY.

No III.

A party granted a wadset. The wadsetter by missive acknowledged the sums to be satisfied, and obliged him to renounce. His heir was pursued to grant the renunciation, as representing on the passive titles. Another mode of accomplishing the object suggested by the Court.

THE umquhile Earl of Kinghorn having granted a wadset to the umquhile Laird of Udney, he, by his missive, acknowledged the sums to be satisfied, and obliged him to grant a renunciation; whereupon the Earl of Kinghorn pursues this Udney, as representing his father, to grant renunciation, and procuratory of resignation; and condescended upon the passive title thus, that umquhile Udney, after the receipt of the sums contained in the wadset, had infest the defender in the estate of Udney, reserving to himself a power to alienate and dispone; after which infestment this missive is subscribed, acknowledging the receipt of the sums of before, and thereupon *alleged*, 1<sup>st</sup>, That the father was obliged by the contract of wadset, upon payment of the sums, to renounce and resign, in prejudice of which obligements he had disponed his estate to the defender, who was *alioqui successurus*, and so as lucrative successor is obliged to grant the resignation; 2<sup>dly</sup>, The letter obliging the father to grant resignation, albeit it be after the infestment, yet seeing there is a power reserved to the father to dispone his obligation, must oblige the son. It was *answered*, That there was nothing before the defender's infestment to instruct payment, the letter being after, and no obligation therein could burden him thereafter, unless his father had disponed, or had given a security out of the estate, conform to the reservation.

THE LORDS found this passive title new and extraordinary, therefore moved to the pursuer to alter this libel, and libel therein a declarator of redemption; and to conclude the same either with a reduction or declarator, for declaring that the wadset right being acknowledged by the wadsetter to be satisfied, might be declared extinct; in which case there needed no resignation; or, otherwise, might conclude the defender to grant resignation; and the defender thereupon renouncing to be heir, the pursuer might adjudge, and thereupon be infest; but others thought, that hardly could a right be adjudged which was satisfied and extinct.—THE LORDS referred to the pursuer's choice which of the ways he thought fit.

*Stair, v. I. p. 387.*