

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 dispoise; after which infestment this missive is subscribed, acknowledging the receipt of the sums of before, and thereupon *alleged*, 1st, 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 dispoised his estate to the defender, who was *alioqui successurus*, and so as lucrative successor is obliged to grant the resignation; 2^{dly}, 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 dispoise 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 dispoised, 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.