

the wadset, he was lucrative successor, after that obligation contracted by the wadset.

No 129.

Stair, v. 1. p. 506.

1674. June 7.

— against HEPBURN.

No 130.

THE apothecary Patrick Hepburn's son, being pursued as successor *titulo lucrativo*, for a debt of his father's, upon that ground, that though the right of lands granted to him by his father was before the debt, yet it was revocable, and under reversion to the father, upon a rose noble, when he contracted the debt libelled;

THE LORDS assolizied from the passive title foresaid, but reserved reduction. It appears that the case was not without difficulty; and that albeit future creditors in some cases may reduce anterior rights *ex capite fraudis*, yet this is difficult and unusual; and therefore it had been fit to determine that point, viz. Whether an apparent heir, getting a right revocable, and of the nature foresaid, should be liable at the least *in quantum*; seeing if the father had discharged the reversion, he would have been successor, in respect of the discharge after the debt; and the son was a child, and the father reserved and retained possession, and upon the matter, the father's not redeeming was a discharge of the reversion.

Act. ———.

Alt. Hog.

Fol. Dic. v. 2. p. 37. Dirleton, No 184. p. 74.

1678. July 23.

FERGUSON against LINDSAY.

THOMAS FERGUSON pursues William Lindsay, as representing his father, for payment of his father's bond of 1600 merks, and insists against him as successor lucrative *post contractum debitum*, by an infeftment in lands upon his father's disposition; which infeftment is posterior to this debt, and therefore he is successor after this debt, and *ex causa lucrativa*. The defender answered, *non relevat*, unless the debt had been anterior to the disposition; for that passive title is always understood of a successor *ex causa lucrativa, quæ causa est post contractum debitum*; for the infeftment is but in implement of the disposition *et necessitatis*, though the disposition be *voluntatis*. The pursuer replied, That his debt is both anterior to the infeftment, and the disposition upon which it proceeds. The defender replied, That the disposition is not the cause of the infeftment, but a contract of marriage, disposing the same lands; and though this disposition doth not relate to the contract, yet it is presumed to be in implement thereof, and the father might have been compelled upon the contract to

No 131.
Succession lucrative was found not to be inferred by an infeftment posterior to the pursuer's debt, it being on a contract of marriage anterior to the debt.