

completing the contract, which must be distinguished by suing implement thereof by process. It is true, were the competition with a lawful creditor before obtaining of the decret, something might be said; but, when the debate is with a lucrative successor, who is considered as *eadem persona* with his predecessor, *tempus contractus* is only regarded. And if Sir John had been liable only in a conditional obligation, during the pendency whereof he had disposed his estate to his son, it will not be disputed but that *existente conditione* the son would be liable; since, in that event, *retro pura censetur obligatio*. How much rather is he liable in the present case, where the obligation was simple from the time of the furnishing.

THE LORDS found the defender liable for the debt pursued for.

Fol. Dic. v. 2. p. 38. Forbes, MS. p. 95.

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SECT. IV.

How the Passive Title of Lucrative Succession is purged. What sort of Creditors have the Benefit of this Passive Title.

1633. January 15. Mr ALEXANDER KINNEIR against L. EASTNISEET.

IN an action for registration of a bond granted to Mr. Alexander Kinneir, by the defender's father, the defender being convened as lawfully charged to enter heir, for eliding whereof he renounced; and being convened as successor to his father *post contractum debitum*, for verifying whereof two infestments being produced, viz. the father's right, and the infestment given to the defender by his father's disposition; and the defender excepting, that this disposition could not make him liable as successor to pay the debt of his father, because that right made to him is reduced; and the pursuer replying, That that reduction is for non-production only, the defender being absent, whereby he may reduce when he pleases that decret reductive, and therefore he ought either to pay the debt libelled, or else to renounce all right which he can pretend to the lands by virtue of that right, that the pursuer may otherwise thereupon either seek adjudication or comprising of these lands contained in his rights alleged reduced; the LORDS found that the defender's infestment produced, being standing reduced, (albeit for non-production) could not prove him successor; neither found they it necessary to compel the defender to renounce all right as the pursuer desired, for the right standing reduced made to the defender, then the rest subsisted in the person of the granter thereof who was the

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It was sustained as a defence in a pursuit upon this passive title, that the disposition in the defender's favour stood reduced, though the reduction was in absence.

No 133. direct debtor, whereby the creditor might comprise the same from him, and whenever the defender should obtain the decret redutive taken away, then the pursuer had this action safe against the defender, as successor unprejudged, which then he might prosecute as he pleased ; and, in the mean time, he might serve inhibition against the defender, that he might do no deed to the pursuer's prejudice.

Act. *Craig.*Alt. *Stuart.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 38. Durie, p. 665.*

No 134. 1636. *January 27.* STRAITON *against* CHIRNSIDE.

It was found relevant to infer this passive title, that the heir's right was reduced *in foro contentioso* by one of the father's creditors. And it being *replied*, That the heir got a sum of money for ratifying the decret of reduction ; this was not respected, because it was taking a sum not to be successor. But the LORDS found, That if the pursuer could qualify any prejudice by this ratification, it might be considered how far such prejudice would be sufficient to bind this passive title upon the heir.

*Fol. Dic. v. 2. p. 38. Durie.**** This case is No 17. p. 5395. *voce* HEIRSHIP MOVEABLES.

No 135. 1705. *November 21.* GILLESPIE *against* CARSES.

A PARTY who had only one son, and grandchildren by a deceased daughter, dispoed his estate, first to the grandchildren, and thereafter to his son, who obtained himself first infest. In a competition, the LORDS found, That though the son had the first complete right, yet seeing he became thereby lucrative successor, he was bound to warrant his father's deed in favour of the grandchildren, and could not quarrel the same ; upon which ground the grandchildren were preferred.

Fol. Dic. v. 2. p. 38. Fountainball. Forbes.

*** This case is No 126. p. 9796.