

Gilted, but as a kind of Sucepion & Pralibatio hereditatis, which
Infer a passive title upon the Eldest Son 2^d Novemb. 1687 David
Son contra Davidson. But if an Apparent heir at law make use of a
Disposition or tailzie in his favour affected with a reserved fau-
to the Grantor to alter upon death bee, he cannot after ward quaere
ex capite testis any deed altering the same in whole or in part, 4th
Kensie treatise of Tailzies pag.

One having taken a disposition of lands to his son in fee,
to himself in life rent, with power to the father to Dispose the
Lands, Irredeemably, wadset them or any part of them, or to gra-
Annual rents to be uplifted for the thereof, not with standing of
fees having been taken to the son; and the father having granted
a personal bond to his Creditor for which the lands were a Judge
after the Debit was due, and the lands conveyed from the son to
an Onerous purchaser: The Bond was found to be a good ground
where upon the Creditors of the father might affect the son and
heirs, but not the Son's Singular Successors in those lands get
1719 Home contra Creditors of Provost Grahame. It did affect
son and his heirs, tho the fee did not flow from the father, but
a third party to the son. Because the son tracing of Debt by a
person having power to Dispose and burden lands, is looked up
as a sufficient Exercise of that faculty in favour of the Creditor.
altho we do not specifically grant Infestment for that Debt. Tho
his granting a personal bond for the Debt, puts it in the power
of the Creditor, to Make it Real by Diligence of the Judication
tho it is after the father's death, must be sustained against the
son, who is no worse Case than if the father had exercised the fau-
in favour of his Creditor. Seeing the law supplies the father
Neglect by authorizing adjudication to be had after his death.
And so the lords have all ways decided 21 June 1677 Hope priory
contra Hope priory, lo even where the Debt was contracted before
the faculty (to burden, and so could not be understood as an ex-
use thereof; Unless there were another Estate out of which
Creditor could be paid 16 Decemb 1698 Elliot of Suisid
contra Elliot of Meikle dale. And here upon the same foot
the son was made personally liable tho he had not under-
taken the Debts, because he possessed the fund out of which they
were

Were payable, and payment might be demanded from him at any time
by the force of an adjudication 18 January 1717 Abercromby of
Glasburgh contra Graham of Touchbury. But the bond was still
sustained to affect the sons singular Successors in the lands disposed:
Because, tho the fee remained with the son, to whom they were
purchased with the father's Money, Law upon the account of such per-
sonal Considerations privileged the father's Creditor, so that he
was Creditor, cyphered to the son for his Debt; and since he
Neglected to do so, ^{for an Onerous Cause is safe.} A faculty to
burden or contract with a disposition must be in deed Dispo-
sition by a father to his son, was not intended to Make a bond
granted by the father without Infestment, void in the prejudice
of a post-nat Disposition granted by him to a third party; altho
it be void as to the faculty to burden the son's right,
and that the grantor had actually burdened the same with
the Debt in the word of Deed 1708 Davidson of Tralimer
contra Town of Aberdeen. Because the father reserving
a kind of power to contract Debt under the Statute
not Intended to Make every Burden of the faculty a real
burden upon the Estate, but only to Enable him to bur-
denly to him by having the fee to Debt for the Debt
determined real burdens to be only such as are found in the
Registers of Deeds, Homings, and Inhibitions; or the
contained in the bosom of the father's right, or which are
Real of their own Nature, as services; thers none of which
the bond gave said fee. And the son was bound as to
Deeds of the son, whose right was burdened with Debts to be
contracted by the father: yet the father's Creditors with
whom he contracted hereafter, remain with the fee to one
another Onerous Creditor, tho they have and secure
themselves by heile Real Rights or Diligence.

A special assignation with a faculty reserved in favour
of the Disposer and his Lady or either of them to Alter and
Dispose as they thought fit, was found devised and con-
veyed to the Disposer's Daughter by a General Disposition
Imnium Proponum, containing a Restriction on his
Lady to the provision in her Contract of Marriage,
And