Meanly provided Stair lib. 3 tit. 6 §19.

Sect 3.

Lucrative Succession post Contractum Debitum.

As our Law hath taken care, that Apparent heirs should not acquire Rights to their predecessors estates by singular title from others, except at a fair publick Roup, without being liable to the predecessors Creditors: So it hath also introduced the passive title of Lucrative Succession post Contractum debitum, by which one accepting from another without any other cause, a Disposition of any part of his heritage, to which the receiver would have succeeded as heir to the Disponer, is liable to all his debts contracted before the said Disposition. For clearing up the Nature of this passive title, I shall explain first the Requisites Necessary to infer it, and then the effect and extent thereof. As to the first, the essential constituents of this passive title are, 1° The Right granted. 2° The person to whom it must be made. 3° The time. 4° The cause of granting it.

The Right granted must be a Disposition of Lands or Annualrents or other heritage, tho the Granters whole or principal heritage be not disponed: For a Disposition of any part thereof suffices to ground this passive title Stair lib. 3 tit. 7 §4. It was Incurred by an Eldest son accepting from his father an assignation to an heritable bond which would have fallen to him as heir 2 decemb. 1665 Edgar contra Colvil. And by Disposition to an Eldest son of a second Marriage, albeit by his Mothers Contract the father was obliged to infeft him in these lands: seeing that obligation not bearing a determined time of performance before the fathers contracting debt might have been Implemented at any time in his life 29 Novemb. 1678 Haiggans contra Maxwell. It was Sustained Relevant to subject one to the passive title of Lucrative Successor, that he had a Disposition without an Onerous Cause; albeit he made no use of it and was content to renounce it which he could not do after it was Delivered to him 6 July 1676 Johnstone contra Rome. This passive title is Incurred by the Accepter of a Gratuitous Disposition of Lands, or Annualrents or other heritage to which he might have succeeded as heir of line or Conquest, or as

heir male, or of tailzie or provision 22 Novemb. 1665 Sedcontra Boswell of Auchinleck 22 feb. 1681 More contra Ferguson. Whether he be for the time Immediate or Mediate Apparent heir, if Other ways Necessarily to succeed by course of Law, as the Disponers Eldest son, or that Jons Eldest son. Thus a Disposition to a Grandchild or to the Eldest son of the Apparent heir, Reserving his fathers liferent who was then alive, made him Lucrative successor 29 January 1639 Lady Meiton contra L. Meiton. Seeing by the course of succession he would have probably succeeded as heir. But Bonds of provision by parents to Children do not subject them to any passive title, tho the Children be Apparent heirs: As when such a bond is granted to an Eldest son Stair lib. 3 tit. 7 §2. Yet there is this Difference betwixt provisions to an Apparent heir as an Eldest son, and provisions to other Children: That the former is liable to the Creditors of the deceased in quantum ditatus, without putting them to prove that the provision was made out of their Debtors heritable estate; whereas the latter could not be Reduced by Anterior Creditors, if the father had a sufficient Estate for paying their portions and his other debts 57 feb. 1679 Hamilton of Barcowie contra Hay. And a third May not incur Hazard of a passive Representation, take assignation to a bond granted to the father in satisfaction of security of a bond of provision granted by the father to that Child. But if a son who is not Creditor to his father by bond or otherwise take assignation from his father to a bond which he would succeed to as heir to the Cedent; he would be Liable thereby to his Creditors as Lucrative successor 2 Decemb. 1668 Edgar contra Colvil. Taking Right to Moveable heirships and tacks doth not Infer this passive title M'kenzie Fol. lib. 3 tit. 8 §36. The Infeftment with these would Make behaviour as heir. Nor will the taking a Disposition to things to which the Receiver might not have otherways succeeded as an Apparent heir of tailzied setting a Disposition of what would have fallen to the heir of line, or the heir of lines accepting a Disposition of tailzied lands infer Lucrative succession; tho such Right may be reduced upon the Act of Parliament. Because there can be no preceptio hereditatis where there is no heritage Stair lib. 3 tit. 8 §7. Rights acquired by one originally in the