

Name of his apparent heir, do Not Make him Inevitable
 ceptor; because the predecessor Never having been fear of
 such Rights, his apparent heir could Not Represent him
 therein. Nor could such an Acquisition be Reduced upon
 the Act of parliament 1621, because Reduction would Not
 Return the Subject Requir'd to the predecessor who Never
 had it. But the same might be Reached by a Declarator;
 that it was acquired by such predecessor & means after
 his Debt Contracted, and therefore is affectable as if it were
 in the person of him or his heirs & assigns. This passive
 title is Not Inferred by a fathers Disposition to his second
 son while the eldest is alive 28 Feb. 1662 Hamilton contra
 M. Parlane or by a Disposition to collateral, as from the
 brother to another, or to his Brothers son, tho' the Dispo-
 nor had No child for the time 22 November, 1665 Deol contra
 Boswell 22 Decemb. 1674 Heirs of Lator contra Peaton
 17 Decemb. 1672 Lady Spencerfield contra L. Erskine
 being he might have had a child, and his Brother is Not
 his apparent heir, while his own (he is in spe.) besides,
 it is not probable that any man would in prejudice of
 his Creditors, simply Dispose to a brother while them-
 self had any hope of issue, and thereby also exclude his
 own son if he should have one, as he might do in favour
 of his own grandchild and future Representative in appa-
 rance. The word heir Infirmus (vid. 82) that Daughters
 are No More Apparent heirs than Brothers. Leaving a
 Man it ever finds a good capable of having a son, but yet
 one of these Daughters to whom the father having No
 sons had Disposed his estate, was found liable to his Creditors
 Creditors, as Inevitable Successor 19 Feb. 1634 Orr contra
 Watson. The active Succession is Not Inferred by Dispo-
 sition to a third person for the behoof of the Apparent heir
 which is sustained only to make the Apparent heir the
 quod Valorem of his Intromission, without pulling
 a Creditor of the Deceased to Revoke the Disposition as
 Equivocal; seeing the Apparent heir had only a personal
 obligation upon the Trustee to Denie 8 14 January 1660
 Kaynar contra Rimes.

Concerning the time of Granting a Heir Infirmus
 may be the foundation of that passive title, it hath
 been questioned whether both the Disposition and Infeftment

Infeftment must be after the Disponers Contracting
 Debtor, if it suffice that the Infeftment was posterior to
 the Disposition or was and then of the prior it would seem
 that making Infeftment after the Debt Contracted, tho' the
 Disposition upon which it followed was made before should
 work this passive title because if Infeftment pass Not by
 Dispositions without Infeftment, cannot be called Infe-
 ceptor till he be Infefted. 2/ the Design of the Law might other-
 ways be easily evaded, by making Dispositions and keeping
 them up till the Disponers borrow Money from merchant
 who should Not know of the latent Disposition, but to
 found this passive title both Disposition and Infeftment
 thereon must be after the Disponers Contracting. 6/ M
 Lenzie Just. 6. 3 Jul. 8 37, and the contrary reason
 are of No weight. For, if a Successor Infeft for is Not
 Successor post Contractum Debitum, ex causa exonerative, by
 applying the words post Contractum Debitum to Successors;
 but Successor ex libito Lenzie two, que tibi habes est post Con-
 tractum Debitum. 2/ The same Inconvenience, is Obvious
 Dispositions to Strangers, which may be kept up unknown to
 Creditors Contracting before thereafter. And Opt Inhibition
 posterior thereto, tho' anterior to the Infeftment proceeding
 thereon would Not be a sufficient Ground to Revoke Infeftment
 as ex capite Stat. lib. 3 Jul. 7 36. It was therefore found, that
 Infeftment posterior to the Debt Contracted, flowing upon
 a Disposition anterior thereto, did Not Make this passive
 title 23 Feb. 1637 Lighton contra L. Kinnaber. Nor
 was it sustained even upon a Disposition and Infeftment
 both posterior to the Debt, where there was an anterior
 obligation in a Contract of Marriage to Dispose the same
 lands, tho' the Disposition did Not expressly Oblige to the
 Contract, seeing it was presumed it be granted inimple-
 ment thereof when No other Party appeared 23 July 1678
 George contra Lindsay, but where fraud in Concealing such
 Dispositions is Intended, and the same will be more easily
 presumed in Apparent heirs than in Strangers, the Infe-
 ptent Infeftment may be Reduced upon that Common
 head, tho' it will not pass a General passive title
 Heir Infirmus. A Debt is understood to be Contracted in
 order to Infeft this passive title against the person the
 Debtor Disposes any part of his Heritage to, when
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