

The Debt is taken on, and not only when it is constituted, but given for it or a Decree against the Debtors. Thus one being taken as Confess upon a Superior Account before he had taken his Oath, his eldest son was found liable to pay the Debt as derivative Successor to the father by Disposition prior to the Decree, the prior to the Decree holding him as Confess; the Obligation having commenced at the time of his purchasing 22 July 1714 Douglas contra Forbes of Belhelvie.

The Cause of granting a Right which operates the passive title of derivative Succession, is either pure lyderative or partly lyderative partly onerous. If pure lyderative, the passive title is plainly incurred. Where the Cause is partly lyderative and partly onerous, if the onerous part be of great consequence or far short of the worth of what is disposed of within the half thereof it will not hinder the passive title to be incurred. 29 Novemb. 1678 Haggens contra Maxwell Minor Inst lib. 3 Tit. 8 § 37. Nor will portions to the Disparent heir after Children undertaken and secured by the Disparent being paid before Diligence by the Disparent, not be sustained as an onerous Cause to exempt the apparent heir from this passive title: because he may not spend upon multiple pointing and will not be liable to both the Disparent and Creditors, but only to the party preferred, in Case Successor title lyderative by receiving Infeffment in lands, upon a Disposition thereof to him in his Contract of Marriage post Contractum debitorum; tho' he offered to Renounce all benefit he had there by, and a Contract of Marriage is accounted an onerous Cause except in so far as the provision is not suitable to the condition of the parties. 8 July 1665 Gray contra Burgess. But if the Cause be as equal or near to the worth of what is disposed, the passive title is not incurred; tho' the Disposition may be taken upon the Statute 1621 as granted in freedom Creditorem; 16 Feb. 1676 Hadden contra Halyburton Minor Inst. In Debt for to whom land affected with a Wadset were Disposed in his Contract of Marriage, and by whose Means the Wadset was redeemed was not liable as derivative Successor to his father, although the land disposed were of more Value than the Wadset: In respect the son bestrode his Right to the Wadset and being yet Minor Renounced the said Integrit all for the

farther benefit by the Disposition 15 January 1687 Courty contra Weymis. Again, where land were Disposed by a father to his son in his Contract of Marriage for a locker received by the father, and some of his Debt and retained by the son for within the Value of the lands; the son was not liable as derivative Successor in solitium, but the land were found redeemable for the sum truly paid by the son, and the son liable to the father's Creditors for the Surplus of the price according to the ordinary rate of land at the time of the Disposition, and the Annual rent there offering the price bears Annual rent 17 June 1669 Lyon of Mureth contra Elphick. Altho' the Disposition seems to be granted for an onerous Cause the Onerosity or Valuable Consideration must be proved otherwise than by the Variation of the price. 15 Feb. 1676 Hadden contra Halyburton. Where a Disposition by a father to his son and apparent heir bore for love and favour and other good Causes and redeemable by the father for forty shillings and less it was found to be pure Donation, and the apparent heir not allowed to prove that the father was that Debtor to him in Equivalent sums 22 Novemb. 1671 Beattie contra Roseburgh.

This passive title of derivative Successor preceptione Spandilatis transit in Heredes, that is the heir of derivative Successor was found liable in solitium upon that Medium to pay the Debt of him to whom his predecessor was derivative Successor 13 Decemb. 1701 Willson contra Finnes of Auchincloch cart 22 July 1725 Shaw and Rankine contra Baird of Glenour. Tho' it be otherwise as to the passive title of behaviour as heirs.

So much shall suffice to show how this passive title is incurred, and who may be liable there to: I proceed to consider the Effect and Extent of it.

This passive title doth (as that of behaviour as heirs) make the derivative Successor liable in the same Manner as if he was entred heir, and the partition is thus one of several heirs portions derivative Successor is liable only for the rate of the Debt he the Best he Disposed. 17th Novemb. 1678. 8 July 1678. But one of three Daughters to whom the father having no Sons disposed all his estate was found liable to an anterior Creditor in solitium for the whole Debt as Successor title lyderative; altho' she was not such a person as