

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.