No 113. found that dispositions made to a brother or one of the collateral line, could not infer a passive title, but they were only liable *in quantum lucrati sunt*, and their rights may be reduced upon the act of Parliament as done *in fraudem*.

Gosford, MS. No 545. p. 291.

*** A similar decision was pronounced, 22d December 1674, Heirs Portioners of Seaton against Seaton, No 21. p. 5397, *voce* Heirship Moveables.

No 114. 1676. *July* 8. Johnston *against* Rome.

In a pursuit upon the passive title of *successor titulo lucrativo*, in so far as the defender had a disposition from his father, without an onerous cause, the Lords sustained the pursuit, albeit it was *alleged* by the defender, he had made no use of the said disposition, and was content to renounce the same; which the Lords found he could not do, being delivered to him. A concluded cause advised.

Clerk, *Mr Thomas Hay.*

Fol. Dic. v. 2. p. 38. Dirleton, No 377. p. 184.

No 115. 1679. *February* 7. Hamilton of Pardowie *against* Mr Andrew Hay.

The Lords found the son not liable for the father's debt, contracted after the son's fee by the contract of marriage, but found him liable *in quantum lucratus*.

Fol. Dic. v. 2. p. 36. Fountainhall, MS.

*** Stair reports this case:

Bonds disponed to the heir presumed heritable, in order to infer the passive title.

John Hamilton of Bardowie pursues Mr Andrew Hay for relief of a sum, whereunto his father was conjunct cautioner with Bardowie's predecessor, and also for another sum due by his father to the pursuer, upon these passive titles, viz. That by his contract of marriage his father had contracted to him for several sums, and that after the cautionry foresaid, and after the other bond, the defender had bought a considerable bargain of land, which must be presumed to have been purchased by his father's means and money, especially seeing his father shortly before sold lands for 37,000 merks, and the defender was a person having no visible way to acquire so much land as he bought, by his own means; and therefore he must be liable for these debts, at least the lands acquired by the defender must be affected therewith, and he must be liable for the provisions in his contract *in quantum lucratus est*. The defender *alleged*, That neither of these grounds are relevant, for any lands he has acquired was after he was married, and had both gotten a provision from his father, and a tocher with his wife; and though the Lords have sustained the presumption, that lands ac-

quired in name of children unforisfamiliated, are purchased by the father's means, and liable to his debt, unless the contrary were instructed, yet there is no ground to extend that to a person married, and forisfamiliated, who not only had means, but might have contracted debts for the lands acquired.—THE LORDS found the defender's land not liable upon this presumption, but that it might be proved by his oath or writ, that these lands were acquired by his father's means, after contracting of these debts.—And as to the second ground the defender *alleged*, That suitable portions by parents to children were never found quarrelable by reduction, at the instance of prior creditors, if the father then had a sufficient visible estate to pay his debt, attour the portions, as was found in the case of the Children of Mouswell, No 60. p. 934. much less can the children be liable personally.—The pursuer *answered*, That whatever might be alleged as to tochers of daughters, or the provisions of younger sons, yet provisions to the eldest son and apparent heir, being in effect *præceptio hæreditatis*, it must must make him liable *in quantum lucratus*.—It was *replied* for the defender, That the provision might be out of the father's moveables, for unless it were proved to be out of his heritable rights it could not import. No 115.

THE LORDS found, That the apparent heir being provided to sums by his father, was liable for his father's anterior debts *in quantum lucratus*; and would not put the creditors to prove, that the same was made out of heritable sums, unless the contract of marriage did expressly bear assignations to moveable sums.

Stair, *v.* 2. *p.* 688.

1681. *February* 22. MORE *against* FERGUSON.

No 116.
A younger son was found lucrative successor, accepting and using a disposition of his father's lands, wherein he would have succeeded as heir of a marriage.

GRISSEL MORE, as executrix confirmed to John Chalmers her husband, pursues Ferguson as successor *titulo lucrativo* to his father the debitor.—The defender *alleged* no process, because he hath an elder brother who is heir of line, and is not discust; 2*do*, Though he were discust, the defender is not liable by any disposition made by his father, and albeit the disposition may be reduced, yet he is not personally liable.—The pursuer *answered* to the first, That the eldest son being weak, is past by, and all is disponed to this defender, who thereby is universal successor, and nothing can be shown of the father's succession, to which the eldest son could succeed.—The defender *replied*, That our law hath no such passive title as universal successor by disposition, though it were of the disponer's whole estate and means, but the passive title is successor lucrative by disposition in that right in which the party would have succeeded; so that the disposition is *præceptio hæreditatis*, which is equivalent, he being entered heir *passive*, whether the disposition be of all or of a part of that wherein he would have succeeded; and therefore *præceptio hæreditatis* is a relevant passive title against the heir of line, and if he be discust, against the heir-male, and these being discust, against the heir of tailzie or provision, such as the defender, who