

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. Fountainball, MS.

*** Stair reports this case :

Bonds dis-
poned to the
heir presum-
ed heritable,
in order to
infer the pas-
sive 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-