

and allows a competent time to their Creditors to do personal Diligence for affecting their Debts of estate. For No Law, the said Heir can Dispose or Make any right of his predecessors estate to the prejudice of the said Creditors, till a full Year after the predecessors Death Act 27 Par. 1 Sept. 1720. was thought unreasonable that he having Year and day Relations whether he would enter heir or Not should Dispose of the predecessors estate sooner to the prejudice of the said Creditors. But the heir may after Elapsing of a Year from the predecessors death effectually Dispose to the prejudice of Creditors who have Not secured themselves by complete Discharge only Indicated Diligence 17 June 1712 Ker of C. Hall contra Creditors of Garden & Co. supra pag. 144 B. being it appears by the Rubric. hanc Statutory part of their Laws which enables a heir to Dispose of his predecessors estate within a Year of his death to the prejudice of his predecessors Creditors, that it is only against the apparent heirs Creditors: Inasmuch if the apparent heir may Dispose for the satisfaction of any of his fathers Creditors within the Year 2 Englandum. Because this point was undetermined before the Lords November 1686 Ballantine contra Dundas of Morrison, but Not determined.

The Active title of heirs is Most Ordinarily put to use by a Return or Infeoffment as heirs. Whether a Service Not performed be a sufficient title, cannot be held here from what the Lord says about it. For to assert in one place 3 Feb. 5 & 51 Vers. so much for the being that it is, and in the place (ibid 541) that it is not. A Charter and Gift of lands made to a Man and his heirs, and a Return of one served heir to the Man, with a precept out of the Chancery charging the grantors former Charter and Gift to the predecessor to fulfill the heirs the Return, was Not sustained without his heirs purchase a Return against him who was Statutor of the predecessors Right, and his tenants, albeit the purchaser wanted his heirs thro' the decessors fault who was charged as it said, to give it them 20 June 1627 L. Gouch contra L. Howard in Miln vid supra pag.

The Heirs Active title Must be produced and repeated in every process at his Instance heir ibid. § 52 Jusse. If a Decree being obtained against one his heir to his fathers the price of land sold to the father by the obtainer of the said Decree was Not sustained as a sufficient Instruction, the heirs Active title in an Action of Warrandice of the said land against the father 11 Feb. 1620 Stuart contra Wilson

Sects. I. Active Interest of heirs Justitiate.

Heirs Male and Heirs of tailzie and provision, are Intitled to No more than the Subject provided to them, or what is necessary there to. Thus if a Man take a right to lands or annual rents by Infeoffment in favour of himself and his heirs Male or heirs of tailzie or provision, any Appoyzing a Judiciale Reversion lacks, or other Security of the said lands or annual rents required by him to himself and his heirs, or his heirs whatsoever, Whether before or after Infeoffment in favour of the special Heirs aforesaid, will become to that special heir to Whom the said lands or annual rents were provided heir 26. 3 Feb. 5 & 12. Because it is Not presumable that a Man would give these lands or annual rents to one, and the right of them to another, thereby to let him by the Law; Must he Let his special heirs Expressly, and the heirs whatsoever or heirs of the Not specially Designed, so ordinarily signify heirs of line, who are heirs General; Yet in the larger Reception, the Heirs of line, Heirs of line General, but heirs General, whether of line, Male, tailzie or provision, as when one obliges himself and his heirs whatsoever, thereby to all kinds of heirs in their order are understood. And sometimes by heirs whatsoever & special heirs are mainly intended: As when in the case aforesaid the obligation relates to lands or others provided to such special heirs. But the Lord says (ibid) is Not clear, how special heirs can be served which subsequent Rights conceived in favour of heirs whatsoever. Obligations in favour of heirs of tailzie and Provision, are always Effectual against the heir of line; In Relation to Whom the heirs of tailzie and provision are Considered as Strangers or Creditors 28 January 1668 Binny contra Binny 3 Feb. 1647 Drummond contra Drummond heir ibid. § 18. Process was sustained at the Instance of an heir Male against the heir of line for declaring that their predecessor had right to an appoyzing upon another Estate, and that the appoyzing was affected for the purchase of the Heir of the predecessors Debts; altho' these debts were Not libelled or produced: In respect No Conclusion of payment was libelled against the lineal heir 2 Feb. 1710 E. Landale contra Lord Gester The Heir of line stands as liable to fulfill obligations in favour of heirs of Provision 2 Feb. 1713 Balfour contra Greig.

Process is sustained at the Instance of the presumptive heirs of a Marriage against the father in his own time to fulfill the special obligations in their Mothers Contracts, or to purge any debt already done by him to their prejudice; the Heirs could Not be actually heirs to their father while he is alive; But