

## S E C T. IV.

Where the Heir Male or of Entail is bound primarily ;—or, bound to relieve the Heir of Line.

1663. February 18.

WILLIAM BLAIR *against* ANDERSON.

WILLIAM BLAIR as assignee by the wife and bairns of Mr David Anderson, by his second marriage, pursues his daughters, both of the first and second marriage, as heirs of line, for implement of the second contract of marriage, and the daughters of the second marriage offering to renounce to be heirs of line, but prejudice of their provision, by contract of marriage, as bairns of that marriage, the assignee insisted against the daughters of the first marriage, as lawfully charged, &c. Who *alleged* no process, because the provision, by the contract of marriage insisted on, runs thus, that Mr David obliged himself, and his heirs-male, successors to him in his estate, but did oblige no other heirs. *Ita est*, there is an heir-male. The pursuer *answered*, albeit heirs-male were only expressed, other heirs were not excluded; especially, seeing he bound himself, so that the effect thereof would only be, that the heir-male should be liable *primo loco*.

THE LORDS found the heir-male liable *primo loco*, and the heirs of line *secundo loco*, and found the heir-male sufficiently discussed, by an apprising of the clause of the contract of marriage, in favours of the heirs-male, they not being infest as yet, and having no other right.

*Fol. Dic. v. 1. p. 247. Stair, v. 1. p. 182.*

## No 18.

One having bound himself and his heirs-male, the heir male was found liable *primo loco*, and the heirs of line *secundo loco*.

1665. November 22. LAURENCE SCOT *against* DAVID BOSWEL of Auchinleck.

UMQUHLE David Boswel of Auchinleck, being debtor to Laurence Scot in 1000 pounds, by bond; he pursues his daughters, as heirs of line, and David Boswel now of Auchinleck, his brother's son, as heir-male, or at least lucrative successor, by accepting a disposition of lands from the defunct, which were provided to heirs-male, and so being *alioqui successurus*. It was *alleged* for the said David, no process against him, till the heirs of line were first discussed. It was *replied*, and offered to be proven, that he was obliged to relieve the heirs of line.

Which THE LORDS found relevant.

It was further *alleged* for the defender, that he could not be convened as lucrative successor, by the foresaid disposition, because the time of the disposition he was not *alioqui successurus*, in respect that his father was living. It was *answered*, that albeit he was not immediate successor, yet being the mediate

## No 19.

An heir-male who is obliged to relieve the heir of line, has not the benefit of discussion.