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thereto; and so the defender was not found successor by the said infestment, although it bore more nor the wadset, and that the heritable right of the lands, whereto he was provided by that sasine, was far more worth than the sum of the wadset.

Act. *Gilmour et Craig.*Alt. *Stuart et Primrose.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 36. Durie, p. 822.*1661. *November 22.*BOSWELL *against* BOSWELL

No 121.

Where it was alleged that the disposition was for onerous causes, nearly equivalent to the value of the lands, the Lords, before answer, ordered all instructions of the onerosity to be produced, in order to consider whether there was a considerable inequality.

JOHN BOSWELL pursues Boswell of Abden, as representing Henry Boswell his father, for payment of L. 1000, due to the pursuer by the said umquhile Henry, and insisted against the defender, as lucrative successor, by accepting a disposition of lands and heritage from the said umquhile Henry, whereunto he would have succeeded, and was therein his appearing heir. The defender *alleged*, He was not lucrative successor, because the disposition was for causes onerous. The pursuer *answered*, *Non relevat*, unless it were alleged for causes onerous, equivalent to the worth of the land; as was formerly found in the case of Elizabeth Sinclair against Elphingston of Cardon, *See APPENDIX.* The defender *answered*, *Maxime relevat* to purge this odious passive title of lucrative successor, which is no where sustained but in Scotland; specially seeing the pursuer hath a more favourable remedy, by reduction of the disposition, upon the act of Parliament 1621, if the price be not equivalent; and there it is sufficient to say, it was for a considerable sum, or, at least, it exceeded the half of the worth, for there is latitude in buying and selling; and, as an inconsiderable sum could not purge this title, so the want of an inconsiderable part of the full price could as little incur it.

THE LORDS, before answer, ordained the defender to produce his disposition, and all instructions of the cause onerous thereof, that they might consider if there was a considerable want of the equivalence of the price. Here the defender pleaded not, that he was not *alioqui successurus* the time of the disposition, being but cousin-german to the defunct, who might have had children.

*Fol. Dic. v. 2. p. 36. Stair, v. 1. p. 62.*

\* \* \* In conformity with the above case was decided Harper against Home,  
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1664. *June 17.* LYON of Muirask *against* LAIRD of ELSICK.

No 122.

A disposition of lands in an elder son's

LYON of Muirask pursues the Laird of Elsick upon a debt of his father's, as successor *titulo lucrativo.* The defender *alleged*, *Absolvitor*; because any dis-

position he had from his father was in his contract of marriage, whereby 10,000 merks of tocher was received by his father, and 14,000 merks of debt more undertaken for his father, with the burden of his father's liferent. The pursuer *answered*, The allegiance ought to be repelled; because he offered him to prove, that the land disposed was then worth forty or fifty chalders of victual, so that the cause onerous was not the half of the value; and, therefore, as to the superplus, he was lucrative successor. The defender *answered*, That any onerous cause or price, though incompetent, was enough to purge this passive title; and albeit the pursuer might reduce the right, and make the lands liable, because the cause was not onerous and equivalent, yet he could not be personally liable *in solidum* for all the defunct's debts.

THE LORDS having seriously considered the business, after a former interlocutor the last session, assoilzing from the passive title, but finding the lands redeemable by the pursuer, or any other creditor, for the sums paid out, did now find further, that the defender was liable for the superplus of the just price of the land, according to the ordinary rate the time of the disposition, and that the superplus, over and above what he paid or undertook, ought to bear annualrent, as being the price of land.

*Fol. Dic. v. 2. p. 37. Stair, v. 1. p. 203.*

\* \* \* Gilmour reports this case :

1664. June 21.—THERE is an action pursued at the instance of John Lyon of Muireisk, against Bannerman of Elsick, as successor *titulo lucrativo* to his father, in the lands of Elsick and others, for payment of a debt owing by his father, before his right. It was *alleged*, That the right he had from his father was onerous, viz. his contract of marriage, by which, for 10,000 merks received by the father of his son's tocher, and for certain other burdens, wherewith his father had power to burden the lands, his father did dispoise the estate to him. To which it was *answered*, That the tocher and burdens foresaid were not equivalent to the worth of the lands; so that, for the superplus, the defender was successor *titulo lucrativo*. It was *replied*, That the title being onerous, though there might be a superplus of the worth, that could not make him successor by a lucrative title; but all that it could work is, that the lands might be redeemable from the defender for the tocher paid, and other burdens truly undertaken, as was found *in anno 1637* betwixt Wemyss of Lothacker and his father's creditors, No 120. p. 9790. at the least, that the lands should be really liable for the said superplus.

Which accordingly the LORDS found; and parties being *de novo* heard, they adhered to their former interlocutor, with this addition, that the superplus foresaid, as the same might be estimated the time of the contract, should not

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contract of marriage, found not to make him lucrative successor, the father having got the tocher, and the son being burdened with certain debts; but the son was found liable *in quantum lucratus*.

No 122. only be liable to the creditors after count, but also for the annualrent thereof, after the intenting of the respective creditors their cause.

*Gilmour, No 106. p. 79.*

1671. November 22. BEATIE against ROXBURGH.

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BEATIE pursues Roxburgh as successor lucrative to his father, by a disposition produced, bearing for love and favour, and other good causes, redeemable by the father for forty shillings Scots. The defender *alleged*, That whatever was the tenor of the disposition, yet the true cause thereof was onerous, being granted for sums belonging to the son *aliunde*, intromitted with by the father, equivalent to the worth of the land, which uses always to purge this passive title, *quia debitor non præsumitur donare*.

THE LORDS found the defender lucrative successor by this disposition, the reversion making it evident to be a pure donation, and not given for any other cause.

*Stair, v. 2. p. 8.*

\* \* \* Gosford reports this case :

ROXBURGH being pursued as successor *titulo lucrativo* to his father, in so far he had disposed to him a tenement, which did bear for love and favour, and wherein there was a reversion, bearing a power to redeem for payment of 20 shillings Scots, which tenement he yet possessed many years after his father's decease; it was *alleged*, That that disposition, albeit so conceived, could not make him successor *titulo lucrativo*, because he offered to instruct, that his father was debtor to him, by intromission with great sums of money left to him by his uncle on the mother's side, far exceeding the worth of the tenement, and the disposition being conceived in such terms as his father pleased, when he was minor, and *in familia*, it ought not to infer a passive title against him, which would make him liable to all his father's debts, he himself being a true creditor.—THE LORDS did find, that the disposition being conceived as said is, was a lucrative title, and made him liable to all his father's debts, which was very hard.

*Gosford, MS. No 401. p. 202.*

No 124.  
Where there  
is an onerous  
cause, altho'  
not fully equal

1676. February 15. HADDEN against HALIBURTON.

PATRICK HADDEN pursues George Haliburton as lucrative successor to his mother, by a disposition granted by her to him of lands wherein he was *alio-*