

No 460. *ab incommodo*, they sustained the foresaid disposition, with the quality of his solvency abovementioned at the time thereof.

Fol. Dic. v. 2. p. 252. Fountainball, v. 2. p. 640.

1711. July 4.

MR SAMUEL GRAY Writer in Edinburgh *against* WALTER CHIESLY
Merchant there.

No 461.

A fitted account betwixt an insolvent person and his brother-in-law, containing many articles for a long course of time, paid to a third party upon the insolvent person's account, was found to prove its onerous cause.

IN the competition for the mails and duties of the lands of Blackcastle, betwixt Mr Samuel Gray and Walter Chiesly, both adjudgers thereof from James Chiesly their common debtor by bonds;

Alleged for Walter Chiesly; Mr Samuel Gray being James Chiesly's brother-in-law, and the bond which was the ground of his adjudication, being posterior to that granted to Walter Chiesly; it was reducible upon the act of Parliament 1621, as fraudulent and gratuitous, and the adjudication led thereon must fall in consequence, unless Mr Gray instruct the onerous cause.

Replied for Mr Gray; The onerous cause of the bond granted to him is sufficiently instructed by a fitted account betwixt him and the common debtor, of many articles paid by the former for the latter to third parties, during a long tract of correspondence before, to which there is a docquet subjoined, signed by both before witnesses, wherein James Chiesly acknowledgeth himself to be resting to Mr Gray a certain balance, for which the bond in question bears to have been granted.

Duplied for Walter Chiesly; The common debtor being insolvent and a conjunct person to Mr Gray, the account which is of the same date with the bond, cannot prove the onerous cause thereof; otherwise it were easy for a bankrupt to elude the act of Parliament by granting a writ to some conjunct person, acknowledging that he owed him formerly what sums he pleaseth, and then grant bond for the same.

Triplid for Mr Gray; Bonds granted to conjunct persons are only presumed to be gratuitous and feigned, which presumption is sufficiently taken off in this case by the fitted account, relating to payments made for James Chiesly, long before adjusting and balancing the account. Yea, any probation of an onerous cause useth to be sustained to elide such a presumption of fraud; and sometimes the Lords are pleased to take the common debtor's oath.

THE LORDS found, that Mr Samuel Gray had sufficiently instructed the onerous cause of the bond granted to him, and ordained him and Walter Chiesly to come in *pari passu*, their adjudications being within year and day of one another.

Fol. Dic. v. 2. p. 251. Forbes, p. 510.