No 31. fender had the benefit of a possessory judgment, and freed him from the bygone teind duties before the reduction, but found the reason of reduction relevant against the Queen's tack, that her right was temporary by liferent, *et resoluto jure dantis resolvitur jus accipientis.* But the LORDS did not determine or sustain that Rankeilor's tack was not assignable, because it exprest not assignees, or that it ceased so soon as Rankeilor ceased to be fiar of Pinkie.

Fol. Dic. v. 1. p. 433. Stair, v. 2. p. 598.

1724. *July* 14. JOHN and THOMAS WHITES *against* HUGH SNODGRASS.

No 32.
A person disponed his lands to his nephews, who at the same time granted to the disponer a bond for a certain sum payable to him and his assignees, which in the narrative was said to be the onerous cause of the disposition. Some years after this, the disponer granted to the same persons another disposition of the same lands, bearing to be for onerous causes, and an equivalent paid of the worth of the lands, of which he thereby discharged the disponees. Found, that by this last disposition, the bond given by the disponees was not discharged.

HUGH SNODGRASS of Nettleherst, in May 1711, executed a gratuitous disposition of his lands in favours of the pursuers (his nephews by a sister) which he burdened with his own liferent and payment of his debts, and the disposition was to become void in case of his having heirs of his own body; he also reserved a power to alter or innovate at pleasure. Of the same date with this disposition, the disponees granted a bond for L. 3000 Scots, payable to him or his assignees, secluding heirs or executors; and this bond mentioned, that it was given as the onerous cause of the disposition.

In August thereafter he made a second disposition of the same lands in favours of the same persons, which varied in no other way from the former, than that it was conceived irredeemable, and upon this disposition the pursuers were infeft.

In the year 1719, he granted a third disposition of the same subjects to the persons above mentioned, which bore to be for onerous causes, and a sum of money paid equivalent to the worth of the lands, of which he thereby discharged the pursuers, for himself, his heirs, executors, or assignees; and this he declared was in corroboration of the second disposition.

In December 1722, he gratuitously assigned the bond for L. 3000 to Hugh Snodgrass the defender, who was his nephew by a brother, and his heir of line; the assignation was intimated to the Whites a few days after it was granted, and inhibition was used against them; upon which they insisted in a reduction of their own bond; and *contended*, That by the last disposition, which proceeded upon a narrative of an adequate price received, there was an innovation of the former right; at least in so far as to be an effectual discharge of the back-bond relative thereto; for had the disposition *anno* 1711, and the back-bond been conceived in way of a contract, with an obligation to pay a certain price at the disponer's death, there could be no question, but that a subsequent disposition of the same lands to the same persons, bearing the price to be instantly paid, would be an extinction of the former obligation. It was farther *argued*, That though the pursuers should not be able to instruct, that there was a price really paid when the last disposition was granted, yet that could make no difference in a question betwixt them and this gratuitous assignee, because he could be in no better case than his cedent, who could not quarrel a disposition from himself upon the head of its being granted without payment of any price, since the deed expressly contained an acknowledgment to the contrary.

No 32.

It was *answered*, 1*mo*, That notwithstanding of the affected narrative of the last disposition, yet it certainly was gratuitous as well as the other two, except as to the bond which subsisted as the true cause of them all; for the nature of the last disposition, which reserved the granter's liferent, and was to become void upon the existence of heirs of his body, was incompatible with the pretext of payment of any other price; for who would have paid a price for a disposition to lands burdened with such a reservation and such a resolutive clause? The case really was, that this bond standing and subsisting in the disponer's person, was the only onerous cause of it; and this appears the more plainly, from the pursuer's not being able to condescend upon any other money or debts paid, or undertaken by them for the granter. 2*do*, Since the bond bore *in gremio*, that it was the price of the first disposition, the case was still plainer, because the subsequent two made no alteration; for the second was of the nature and form of the first; and the last was so far from innovating, that it expressly corroborated the second. 3*tio*, Though the defender was but a gratuitous assignee, yet since the pursuers were only gratuitous disponees any farther than as to the bond in question, the same must be effectual against them, especially since the defender had the advantage of being the granter's heir of line, and would have excluded them *ab intestato*.

THE LORDS found, that the disposition 1719, supposing there was not really any onerous cause then performed, did not import a discharge of the L. 3000 bond.

Reporter, *Lord Newhall.* Act. *Ja. Fergusson, sen.* Alt. *Arch. Hamilton, sen. & Hugh Dalrymple, jun.* Clerk, *Gibson.*

Fol. Dic. v. 3. *p.* 302. *Edgar, p.* 81.

SECT. VI.

Irritancy incurred, how past from.

1612. *December* 22. CUSTOMERS *against* M'MATH.

No 33.

IN an action of declarator, pursued by the Customers against Edward M'Math, the LORDS found that a failzie upon a clause irritant was purged, in so far as after the failzie the parties acknowledged Edward M'Math as partner, by admitting of him to their meetings, and hearing of their accounts as one of their partners; *item*, that payment was made by Edward, at the least a precept directed by the Comptroller for payment to Edward of 1000 merks, which precept was accepted by the Customers, and thereby they became his debtors, and consequently might have retained that sum in their own hands, and so *per consequentiam* the failzie was purged.

Fol. Dic. v. 1. *p.* 433. *Kerse, MS. fol.* 109.