the only case the statute 1721 takes notice of, from such where besides the statutory fraud founded on the relation, there appear other fraudulent grounds; for example, where the disposition quarrelled is *omnium bonorum*, or granted *retenta possessione*; or where it does not appear that the acquirer had means wherewithal to purchase the same; or perhaps where the granter of the right was at the time a notour bankrupt. In all these and the like cases, the Lords have been in use to ordain the acquirer of the right to prove the onerosity *aliunde* than from the narrative; because of the presumed fraud, arising not from the statute only, but from other pregnant circumstances; and because it for the most part happens, that in reductions upon the act 1621, some such circumstances as these concur; therefore in the course of the decisions, the proof of the onerous cause is ordinarily laid upon the purchaser or acquirer of the right. But on the other hand, where it plainly appears, that the reduction rests solely upon the statute, from the relation betwixt the parties, without any other circumstance; the Lords in that case did never burden the party-receiver of the right to prove the onerosity, providing the deed itself proceeds upon a narrative of onerous causes; and that because the statute itself so provides in these words, "And it shall be sufficient probation of the fraud intended against the creditors, if they shall be able to verify by writ or oath of the party-receiver, that the same was made without any true cause." And taking the matter in this view, practice has never deviated from this clause of the act. Thus then Mr Forbes is founded in the words of the statute, his disposition bears onerous causes, and there is not the least presumption of fraud, except what arises from his relation to the bankrupt. But to put his case still more beyond dispute, he has produced the cancelled bond given for the price, and which was signed before many famous witnesses; as strong an evidence as can be had from the nature of the transaction, since it is but seldom that witnesses are adhibited in the lending or paying of money; which if not sustained, the natural consequence must be, to destroy all commerce amongst relations; and were Mr Forbes even so lucky, that he could prove payment of his bond by witnesses, the same question would still recur, viz. How does it appear, that the money was not returned next moment? Which lands in a progress of proofs *in infinitum*. See a similar case, 4th July 1711, Gray *contra* Chiesly, No 461, p. 12568. No 465.

"THE LORDS found the onerosity of the disposition granted by Sir Robert to his brother, sufficiently instructed."

Fol. Dic. v. 2. *p.* 251. *Rem. Dec. v.* 1. *No* 105. *p.* 204.

1728. *December.* Dutchess of BUCCLEUGH *against* SINCLAIR and DOUAL. No 466.

A FACTOR who had run in considerable arrears, granting a disposition to particular subjects for his constituent's security, and the same being challenged

No 466. upon the act 1621 by his other creditors, as being a deed betwixt confident persons, and therefore not probative of its onerous cause; the Lords assoilzied from the reduction, because, in the eye of law, a constituent is not a confident person with regard to his factor, though a factor may be with regard to his constituent; besides, there was a clear claim instructed against the factor upon his factory, viz. the bygone rents, with which he did, or ought to have intromitted, unless it had been taken off by a proof that the same were counted for and cleared. See Appendix.

Fol. Dic. v. 2. p. 254.

No 467. 1739. *January* 18. M'Kies *against* Agnew.

Where a right is quarrelled upon the act 1621, as granted without an onerous cause, and that anterior bonds are produced for instructing thereof, there is no necessity also to instruct the onerous cause of these bonds; though, had these bonds been the deeds quarrelled, the onerous cause of them must have been instructed.

Kilkerran, (Proof.) *No* 1. *p.* 440.

No 468. 1780. *February* 18. Carlyle *against* Mathison.

In a reduction, at the instance of a bankrupt's creditor, of a bond of relief granted by the bankrupt (after he became insolvent, though not bankrupt in terms of the act 1696) to his brother, from two bonds granted by the said bankrupt and his brother conjunctly and severally four years before, the Lords found the bond of relief sufficiently astructed from extra-judicial declarations of creditors, that it was upon the bankrupt's application offering his brother to be bound with him, that they had lent the money, and that it was to the bankrupt they delivered the money upon receiving their bond, and that from him they had received what annualrents had been paid them, joined with the consideration of the circumstances of the said brother, that the bankrupt was needy and in use to borrow money, whereas the other was neither in use to borrow, nor did his circumstances require it.

Kilkerran, (Proof.) *No* 3. *p.* 441.