

No 120.

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-