

he offers him to prove there is an executor confirmed before the intention of this cause. *2do*, Absolvitor from the passive title, as intromittor with the maills and duties of his father's lands; because offers to prove his father was denuded of the fee of these lands in his favour.

Thir defences were found relevant to purge thir odious titles. But as to the alternative, *successor titulo lucrativo post contractum debitum*, it would not do against it. *Vide infra*, No. 575, [June, 1677, Kincaid against Gordon.]

*Advocates' MS. No. 574, § 5, folio 285.*

BOSWELL *against* BOSWELL.

IN a pursuit *in anno* 1662, Boswell in Kinghorn, *contra* Boswell, (whereof I have seen the decret,) it was ALLEGED for the defender, No process against him as successor *titulo lucrativo post contractum debitum*, because he offered him to prove, though he was apparent and nearest heir, yet the disposition was not merely gratuitous and destitute of all onerous cause; but he had these lands disponed to him for sums of money he either had paid, or was obliged to pay, near the half of the worth of the lands, if not more: and so it is to be called an onerous cause more than a lucrative, since the onerous cause predomines, *et unumquodque denominatur a majore et famosiore parte*: it is more onerous than lucrative. ANSWERED, to make it relevant they ought to say not only onerous but adequate, else it is still lucrative.—And so the Lords find to this effect, to make up what is wanting of the price. And so they ordained Sir A. Seaton, of Pitmedden, in his plea with the daughters of Blair, to allege an adequate full price, as ordinarily then given in the country. *Vide supra*, No. 538, *in margine*, [28th January, 1677.] See this marked beside me *alibi*, in some small alphabetical practiques since the King's restoration, *voce successor lucrative*.

Now the Lords liberate from this passive title, if he have paid 9 parts of 12, of the price. See 29th November, 1678, *Hagins against Maxwell*.

*Advocates' MS. No. 574, § 6, folio 286.*

1677. *June.*

ANENT VITIOUS INTROMISSION.

I. IF a stranger shall meddle and intromit with the moveable heirship, it will bind no passive title on him, as the intromission with the moveable goods would do; because heirship is of the nature of heritage, in which no passive titles quadrate against any but those who are *alioqui successuri*. But the stranger's intromission will bind him to simple restitution, and infer vitious intromission, but no passive title.

*Advocates' MS. No. 574, § 7, folio 286.*

II. One is convened as vitious intromitter with the goods and gear of such a man, and it is libelled, that that man vitiously intromitted with the goods and gear of another person, whom they instruct to have been their debtor by bond or decret.