

It was *answered, imo*, 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 resolute clause? The case really was, that this bond standing and subsisting in the disponent'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. *2do*, 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. *3tio*, 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.  
Dalrymple, jun.

Act. Ja. Fergusson, sen.  
Clerk, Gibson.

Alt. Arch. Hamilton, sen. & Hugh

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

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## SECT. VI.

Irritancy incurred, how past from.

1612. December 22.

CUSTOMERS against M'MATH.

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.