No 121.

THE LORDS found, That Sir James Lermonth having been ſolvent in the 1654, the time of granting the diſpoſition, and the ſame never having been quarrelled for ſo many years; Mr William Gordon cannot now be obliged to prove the onerous cauſe thereof. And found, That Mr William Gordon inſtructing that he had the rights of appriſing (then unquarrelled) in his perſon, the time of his entering to poſſeſſion of the teinds, as well as the voluntary right by diſpoſition; he can aſcribe his intromiſſions wholly to the appriſing *medio tempore* till the ſame were found to be only a ſecurity for the ſums therein contained; and preferred Mr William Gordon's diſpoſition to the infeftment of annualrent. *See* INDEFINITE INTROMISSION.

Fol. Dic. v. 1. *p.* 75. *Forbes, p.* 492.

1723. *January.* LYON *againſt* CREDITORS of EASTER OGLE.

No 122.

As a ſecond gratuitous diſpoſition of the ſame ſubject clad with the firſt infeftment, is reducible at the inſtance of the firſt, though the granter have funds *aliunde* ſufficient to pay his debts; ſo the reduction was found to have place againſt the ſecond diſponees creditors, who had adjudged the eſtate from him, in reſpect the ſecond diſpoſition was from a father to his ſon, and bore to be gratuitous. *See* p. 233. and *voce* PROVISION to HEIRS and CHILDREN.

Fol. Dic. v. 1. *p.* 75.

1730. *January* 9. ALLAN *againſt* THOMSON.

No 123.
Unleſs there be evidence of *mala fides* in the ſingular ſucceſſor; his right is ſecure, although his immediate author's right may have been challengeable as *inter conjunctos*.

WILLIAM SANGSTER having diſponed a tenement in Aberdeen, narrating an onerous cauſe, to Charles Sangſter, who happened to be his brother, Charles diſponed the ſame over again to his daughter and her huſband, in their contract of marriage, but without making mention that the ſubject was derived to him from his brother William. A great number of years thereafter, action of reduction upon the act 1621 was intented of theſe diſpoſitions, by a prior creditor of William Sangſter's libelling, that the diſpoſition from William to Charles being betwixt conjunct and confident perſons muſt be preſumed gratuitous; and that therefore Charles' daughter and her huſband who knew of the ſaid conjunction, though, in the eye of law onerous purchaſers, can be in no better caſe than their author. The defence was, that it was extremely likely, the daughter and her huſband knew of the relation betwixt William and Charles Sangſter's, but at the ſame time there was no ſort of evidence of their knowledge that Charles's right was derived from his brother William, without which they were in *optima fide* to purchaſe; and unleſs this knowledge be proved they can never be brought in as *participes fraudis*. THE LORDS, in reſpect there was no evidence that the defender was in the knowledge that Charles Sangſter's right flowed from William Sangſter his brother; therefore they aſſoilzied from the reduction.

Fol. Dic. v. 1. *p.* 75.