

No 210. 1699. June 8. ORD'S RELICT *against* JOHN LUTEFOOT.

A disposition granted by a defunct, in favour of a party, had been borrowed up from the Commissary Clerk by that party, and by him renounced in favour of the heir, when he received a sum of money. He was considered to have accepted the disposition, which being with the burden of debts, he was found liable for them.

AGNES INNES, relict of Laurence Ord, William Oliphant merchant in Edinburgh, and John Doull, writer there, as creditors to the said Laurence, pursue John Lutefoot, writer to the signet, as he who accepted a disposition from the said Laurence Ord of his whole estate, with the burden of his whole debts and legacies, in so far as Laurence's papers being, after his death, by warrant of the Commissaries; sequestrated at the Creditors' desire, the said John Lutefoot had borrowed up that disposition, which was lying with the rest, and had entered into a transaction with Christian Ord, Laurence's only daughter, and William Graham her husband, and renounced the said disposition in their favour, on their paying him 2200 merks as a reward.—*Alleged* for John Lutefoot, That he was so far from accepting of that disposition, or doing any deed importing a homologation of the same, that he had expressly repudiated it, and declared he would have no benefit of the same, in so far as he had renounced it in favour of the said Laurence's heir; and she being served heir, the creditors had no prejudice, for she and her husband would be liable; and he did not transact rashly, but by the advice of lawyers; and the gratuity given him was no price for his renunciation, but expressly given for the many services he had done to Laurence, the defunct.—*Answered*, He taking up the disposition from the Commissary-clerk, and never returning it, was a clear acceptance; and his renunciation being *in favorem*, and not simple, can never liberate him; and though he depones in his oath, that the gratuity was merely for his services, yet *res ipsa loquitur* that it was for the renunciation; and her being served heir imports nothing, seeing she has done it *cum beneficio inventarii* on the late act of Parliament; so the whole is but a contrivance to defraud creditors, and John Lutefoot may recur against her for his relief.—THE LORDS found his acceptance sufficiently proved, and therefore found him liable, and decerned; especially *res* not being *integra* to the creditors, who were damnified by it, and that his disposition was burdened with the debts.

*Fol. Dic. v. 2. p. 39. Fountainball, v. 2. p. 50.*

1737. December 21. MONTGOMERIE *against* MONTGOMERIE.

No 211.

ONE disposed a tenement to a stranger, with this provision, 'That the disponee, by accepting of the disposition, should be bound to pay a yearly annuity to the granter's heir.' In a process for payment of the annuity, the defence was, That he had not as yet resolved, whether he would accept of the disposition, and there is no law obliging him to accept within a limited time.—*Answered*, This is implied in the nature of the thing. It would be unreasonable to bring the pursuer under the necessity of entering heir, and subjecting him-