

No 466. upon the act 1621 by his other creditors, as being a deed betwixt confident persons, and therefore not probative of its onerous cause; the Lords assoilzied from the reduction, because, in the eye of law, a constituent is not a confident person with regard to his factor, though a factor may be with regard to his constituent; besides, there was a clear claim instructed against the factor upon his factory, viz. the bygone rénts, with which he did, or ought to have introrritted, unless it had been taken off by a proof that the same were counted for and cleared. See APPENDIX.

*Fol. Dic. v. 2. p. 254.*

---

No 467. 1739. *January 18.* M'KIES *against* AGNEW.

WHERE a right is quarrelled upon the act 1621, as granted without an onerous cause, and that anterior bonds are produced for instructing thereof, there is no necessity also to instruct the onerous cause of these bonds; though, had these bonds been the deeds quarrelled, the onerous cause of them must have been instructed.

*Kilkerran, (PROOF.) No 1. p. 440.*

---

No 468. 1780. *February 18.* CARLYLE *against* MATHISON.

IN a reduction, at the instance of a bankrupt's creditor, of a bond of relief granted by the bankrupt (after he became insolvent, though not bankrupt in terms of the act 1696) to his brother, from two bonds granted by the said bankrupt and his brother conjunctly and severally four years before, the Lords found the bond of relief sufficiently astructed from extra-judicial declarations of creditors, that it was upon the bankrupt's application offering his brother to be bound with him, that they had lent the money, and that it was to the bankrupt they delivered the money upon receiving their bond, and that from him they had received what annualrents had been paid them, joined with the consideration of the circumstances of the said brother, that the bankrupt was needy and in use to borrow money, whereas the other was neither in use to borrow, nor did his circumstances require it.

*Kilkerran, (PROOF.) No 3. p. 441.*