

shun a plea: And the reservation to the defender to quarrel all contracts, &c. could never concern the lands in question, since, by that deed, the defender got no right to them, nor had he thereby any title vested in him to quarrel the contract 1671.

No 94.

THE LORDS repelled the reasons of reduction of the contract 1670 and 1671; at Mr George Monro's instance against Culrain, and sustained the reasons of reduction of the disposition in favours of Mr George Monro minister, and decerned, reduced, and declared in Culrain's reduction, he consigning 1000 merks before extract; and assoilzied from the reduction at Mr George Monro minister his instance against him, and decerned.

Reporter, *Lord Pencaitland.*Act. *Arch. Hamilton, sen. & Ro. Dundas Advocatus.*Alt. *Dun. Forbes & Cha. Erskine.*Clerk, *Dalrymple.**Fel. Dic. v. 3. p. 273. Edgar, p. 89.*

1744. July 20. LIDDEL and the other Creditors of DICK, Competing.

AN heritable bond granted to David Liddel for 16,600 merks, docketed thus, 'Written by William Wishart notary at Fintry, and subscribed before these witnesses, the said William Wishart and Thomas Wishart,' being objected to as null, in so far as it did not design both the witnesses; the creditor pleaded homologation by an assignation by the granter to him of the mails and duties of the lands contained in the heritable bond for payment of his annual-rents, which fully recited the heritable bond, and fell to have been part of it, written of the same date with the heritable bond, by the same writer, and signed by the same witnesses, and wherein both their designations are expressed thus, 'Written by William Wishart notary in Fintry, and subscribed before these witnesses, the said William Wishart, and Thomas Wishart his son.'

But it was nevertheless found competent to the creditors competing to object the nullity of the heritable bond.

It was a point upon which the Judges are not of one opinion, how far deeds, void for want of solemnity, are capable of homologation. Although there be some decisions sustaining it, yet it was never found in any case that homologation was good in a competition.

Fel. Dic. v. 3. p. 274. Kilkerran, (HOMOLOGATION.) No 2. p. 255.

* * This case is reported by C. Home :

THE said David Liddel being creditor to Andrew Dick by an heritable bond, in order the more easily to obtain payment of his debt, purchased an assignation to a minute of sale of Dick's lands, from one Forrester, whereby Liddel became debtor to Dick in the price of the lands. Dick's creditors having used

No 95.

In a competition among creditors, an heritable bond was objected, to as wanting some of the necessary solemnities.

Answered, The debtor had homologated it by assigning to the creditor the rents of his lands, in which assignation he had recited the heritable bond.

The Lords repelled the defence of homologation.

No 95.

diligence against him by hornings, inhibitions, arrestments, Liddel called them all in a multiple-pounding; whereupon a competition having ensued, Dick's creditors objected to Liddel's heritable bond, that one of the subscribing witnesses to it was not designed in the body of the bond, consequently it was null by the act 1681; the clause, requiring the solemnities of the act, running in the following terms: In witness whereof, I have subscribed this and the two preceding pages, at Clachan of Fintry, written by William Wishart, notary at the Clachan of Fintry, before these witnesses, the said William Wishart and Thomas Wishart.

Answered; Such nullities have been found suppliable by acts of homologation; and here a strong one occurred, viz. an assignation to the mails and duties of the lands granted by Dick to Liddel, wherein the heritable bond is fully recited, and of even date with it, and which was written by the same writer, and had the same witnesses, and ought to have been a part of it; and here Thomas Wishart is designed 'son to William Wishart notary in Fintry.' If indeed Dick had been brought under any disability by his creditors, betwixt the date of the heritable bond and the assignation to the mails and duties, there might have been ground to have made a distinction betwixt the debtor and his creditors, with respect to the effect of the nullity and act of homologation; but as they were both executed *unico contextu*, there is no room for such a distinction. See 17th Feb. 1715, Sinclair, against Sinclair, *voce* WRIT; 29th Feb. 1732, Suddy, *see* APPENDIX; 21st January 1735, Blackwood, *see* APPENDIX.

THE LORDS found it competent to the creditors, competing with the pursuer for the price, to object the nullity.

C. Home, No 272. p. 442.

1748. November 9. NASMITH of Ravenscraig against STORY of Braco.

No 96.

A disposition of superiority burdening it with the vassal's right, found to make the purchaser liable to anomalous conditions in the vassal's charter.

ROBERT HAMILTON, by his disposition to Claud Nasmith, mentioned in the case betwixt the same parties 5th July 1748, *voce* PERSONAL and REAL, had granted several privileges to his vassal; as that he or his tenants being convicted of any wrong or riot in the superior's court, should not be fined in more than 50s. Scots, and that his heirs and assignees should be entered upon payment of double the feu-duty; and he gifted to him the casualties of non-entry, liferent-escheat, or any other by which the lands might fall into his hands; and having disposed the superiority to Ravenscraig, he excepted from the warrandice the feu-rights and charters granted by him and his predecessors, with the burden whereof he granted that disposition; declaring that the exception of the feu-rights should not infer a ratification thereof, but that it should be lawful to Ravenscraig to impugn them on any ground of law, not inferring warrandice against him.

Pleaded for the pursuer of the no-entry against the defender offering to enter, upon a charter being granted him containing these clauses, That they being