

for the lands themselves, but only for the money which he had given her, or which she had taken from him. But I should think that the lands would be a *surrogatum* in place of the money, with respect to the wife, who certainly was debtor in the money, but not with respect to the purchaser, who never was debtor to the husband in the money.

The Lords sustained the purchase.

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1766. June 17. WILLIAM BAILLIE *against* MRS CHATTO.

[*Fac. Coll. IV.* No. 39.]

IN this case the Lords found that an estate being devised to A and his heirs; whom failing, to B and his heirs, and assignees; whom failing, to the donor's heirs whatsoever;—that by A's heirs were meant only the heirs of his body, and therefore, these having failed, they gave the estate to B., *dissent. tantum* Barjarg.

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1766. June 17. PORTERFIELD *against* FALL.

[*Fac. Coll., IV.* 374.]

ONE merchant was owing money to another, which he desired payment of by an order upon Edinburgh; and accordingly a bill was sent him by the debtor on a merchant in Edinburgh, indorsed by the debtor to the creditor. This bill the creditor acknowledged the receipt of, adding, "that when paid it should be noted accordingly." This bill was not duly negotiated, and the question was, Whether, nevertheless, the creditor had recourse against the indorser?

It was said for the creditor, that these words, "when paid," plainly denoted that the bill was not taken either in payment or for value given, but in security of a debt, and therefore that he was bound to do no diligence upon it, because it is an established rule, that, when a debt is assigned in security, the assignee is bound to do no diligence, but only to impute the money, when he gets it, in payment of his debt;—and so it was decided in the very case of a bill betwixt merchants, *9th January 1758, Alexander against Cuming*. But, on the other side, a later decision was quoted, *6th February 1762, Walter Grosset against Receiver-General*, where the like judgment was given by this Court, but it was reversed in the House of Lords.

My Lord Alesmere said, by this last mentioned decision of the House of Lords, and by the judgment in the case of *Brebner against Haliburton*, where the decree of this Court was likewise reversed by the House of Peers, he understood it to be established law, that when one merchant indorses a bill to another, in the way of commerce, whether for value received, for payment, or for security of a debt, or by way of commission, in order to recover payment of it for behoof of the in-