

a *bona fide* purchaser might be secure, who had purchased upon the faith of the public law, seeing that his author was not bound up by any entail duly recorded, nor by any clause in the infestment itself, and in that view had completed his titles, and paid the money, ere any discovery was made of the defect of powers; yet whereas, in the present case, the discovery was made of this objection before the right was completed, or price paid, he could not now be obliged to implement under the feasible right of an after challenge from the heirs of entail, especially as that question could not be tried in the present process of suspension, the heirs of entail not being parties to this suit.

Answered to the *second*, That the statute has no where enacted, that the contravener's right must be annulled in order to make good the prohibitory clauses; the contravener's right may be annulled, and the right of creditors secured, and so *vice versa*: It is the will of the donor, of which the creditor is duly certiorated, that has the legal effect of vacating his security. But whatever may be in this, were the question here with an heir of entail, yet where it is only with the disponent himself, it is believed a purchaser ought not to be obliged to stand the chance of any after challenge, where the discovery has been timeously made.

THE LORDS found the suspender was not bound to accept of the bargain, and therefore suspended the letters *simpliciter*.

Fol. Dic. v. 3. p. 396. C. Home, No 202. p. 336.

1746. December 19.

A. against B.

VERBAL submissions and decrees arbitral *inter rusticos* for matters of small importance, are probable by witnesses. See APPENDIX.

Fol. Dic. v. 3. p. 396.

1766. June 13.

WALLACE, GARDYNE, and Co. against PATRICK MILLER, and Others.

MESSRS Gibson and Balfour, and Patrick Miller, were engaged with John Weir in a co-partnery for selling and bleaching linen, under the designation of John Weir and Co.

In May 1766, Wallace, Gardyne, and Co. of Arbroath, sent a parcel of linens to be bleached by John Weir and Co.; and, upon the 7th of that month, made offer to sell them the cloth at certain prices, upon two months credit.

By this time, the co-partnery of John Weir and Co. was dissolved, which John Weir mentioned in his answer of 16th May; and, at the same time, offered to take the linens upon his own account, on condition that the credit should be enlarged to 4 months.

No 70.

No 71.

No 72.

When it is a part of the agreement, that the bargain shall be reduced into writing, there is *locus poenitentiae* till that be done.

No 72.

Wallace, Gardyne, and Co. agreed to the condition, by letter of the 17th, adding, ' You may compute the amount, and send us your acceptance, payable in 4 months ;' with a postscript in these words : ' Since writing, we have made out an invoice of the linens, amount L. 426 : 18 : 11 ; for which, if found without error, you may send us your acceptance.'

Upon the 23d of May, Messrs Miller and Gibson and Balfour protested and registered certain bills due by John Weir. Upon the 24th, a meeting of his creditors was held ; and that same day, Weir wrote to Wallace, Gardyne, and Co. explaining the situation of his affairs, and asking their directions as to the bleaching of the linens, which he now declined purchasing.

These linens were pointed by Messrs Miller and Gibson and Balfour, upon the 1st of June, as creditors to John Weir, and claimed by Wallace, Gardyne, and Co. as their property.

Pleaded for the defenders ; The contract of sale is completed by mutual consent, and, in sales of moveables, writing is unnecessary. This consent was signified by the letter of 16th May on the one hand, and the letter of 17th May on the other. Nor is it of any consequence, that Weir had not transmitted an acceptance for the price ; that cannot be considered as a circumstance essential to the bargain ; the pursuers demanded no additional security, but had betaken themselves to the credit of Weir alone.

Answered ; When it is agreed that a contract shall be completed by writing, there is *locus poenitentiae*, till that writing be delivered. The contract, therefore, was never completed in this case, as the acceptance was never granted. But, even allowing the contract to have been completed, and the property transferred, Weir was bound in justice to give up the bargain, when he knew himself to be utterly insolvent. Accordingly, he did give it up by his letter of 27th May ; and the protesting and registering his bills the day before, did not make him a notour bankrupt, or invalidate that act, even supposing it to have been necessary for the security of the pursuers.

' THE LORDS found, That the sale of the cloth to Weir was never completed, and repelled the defence.'

Act. Dav. Græme.

Alt. Wight.

G. F.

Fol. Dic. v. 3. p. 396. Fac. Col. No 34. p. 256.

1773. June 24.

JOHN FRASER Tenant in Tranent *against* ROBERT WILLIAMSON, and Others,
Representatives of the deceased JOHN WILLIAMSON.

No 73.

Not competent to prove a verbal submission, even by the oaths of the arbiters.

JOHN FRASER brought an action against the defenders, as representing the deceased John Williamson baker in Tranent, to make payment of L. 93 : 17 : 6d. Sterling, as the balance of an account of wages for work done by the said John Fraser to the said John Williamson preceding July 1771, ' according as the