

to heritable creditors. The case is different as to adjudgers; they are not on the same footing with Mr Armstrong, selling for a price. So it was decided in the case *Gib* against *Williamson*, on a hearing in presence. I would not vary that judgment: other cases have been determined on the same principle.

MONBODDO. An heritable bond is good, because it is the price of the estate: the adjudger seeks to mend his former security.

On the 16th November 1786, "The Lords found that the allegation of fraud is not relevant against the heritable creditor, but found that it is competent against adjudgers, and remitted to the Ordinary to proceed accordingly;" adhering, in substance, to the interlocutor of Lord Swinton.

Act. R. Dundas. *Alt.* Alex. Abercrombie.

1786. November 16. LILIAS BALD and HUSBAND against JEAN BUCHANAN.

CONSOLIDATION—SUPERIOR AND VASSAL.

Of property and superiority not effected *ipso jure*, or without resignation *ad remanentiam*: Whether a conveyance of property, along with superiority, granted by the superior who had only the *dominium directum*, and accepted by the vassal, be valid as to all other parties?

[*Faculty Collection*, IX. 408; *Dictionary*, 15,084.]

PRESIDENT. A resignation *ad remanentiam* is necessary, in order to consolidate property with superiority. This is agreeable to feudal principles, and the opinion of the elder lawyers. If any errors have been committed in practice, these must be avoided hereafter.

BRAXFIELD proposed that the *ratio decidendi* should be mentioned in the interlocutor.

MONBODDO. The judgment of Craig is express on this point.

ESKGROVE. Craig speaks only of a resignation *in favorem*, and not of resignation *ad remanentiam*.

On the 16th November 1786, "The Lords found that the superiority of Wester Common, vested in the person of William Buchanan, under the infeftment 1707, and that the property vested in his person under the infeftment 1731, remained separate and distinct estates; and therefore, that the property could not be carried by the special service and infeftment, which was afterwards expedite in the person of Archibald the second, in respect that no resignation *ad remanentiam*, consolidating the property with the superiority, had been expedite in the person of the said William; therefore repelled the plea of consolidation, and also of prescription and confirmation, and other defences, and sustained the reasons of reduction, so far as respects the lands contained in the contract of marriage 1730."

Act. Matt. Ross. *Alt.* Ilay Campbell. *Reporter*, Justice-Clerk.

Diss. Eskgrove. *Non liquet*, Rockville.