

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.