

No 96.

signees of the feuer, or any person to whom he or they should dispone the lands, for payment of ten merks in name of composition; and the feu having come to Innes of Dunkinty by singular titles, the Duke of Gordon, who was now in the right of superiority, not as representing his predecessor, but by gift of forfeiture, was found obliged to receive Dunkinty on payment of ten merks conform to the clause in the original feu-right, and that he was not entitled to the full year's rent for his entry.

It was, in the *last* place, *observed*, That in the present case Ravenscraig the pursuer had accepted of the conveyance of the superiority with the burden of the feu-right, whereby all clauses in it, supposing them otherwise personal, were rendered real burdens.

THE COURT being much divided upon the general question, they with a declared intention to avoid a decision of it, took up the case upon the speciality last mentioned, and found, ' That the pursuer having accepted of the right with the burden of the feu, he is bound by every clause in the feu-right.

This nevertheless in effect implied a decision of the general question, at least as to the import of the obligation. For if the obligations upon Robert Hamilton to enter the heirs of the vassal, &c. were only binding upon the granter and his heirs, they made no part of the feudal right, with the burden whereof only the conveyance to the pursuer was granted; and for the same reason, the import of the exception from the clause of absolute warrandice also depended on the intention of these obligations; for if it was no other than that they should be binding upon Robert Hamilton himself and his heirs, they did not fall under the warrandice contained in a conveyance to singular successors. *See PERSONAL AND REAL.*

Kilkerran, (PERSONAL AND REAL.) No 5. p. 385.

No 97.

An informal indenture was found homologated by the service having taken place.

1781. July 19. JAMES RYMER *against* ALEXANDER M'INTYRE.

IN May 1776, a son of M'Intyre's, under eleven years of age, entered into the service of Rymer, in his trade, that of an engraver; and, soon after, an indenture was executed between them, by which the boy was to become bound as an apprentice to him, for the term of six years. This writing, however, though subscribed by Rymer, by M'Intyre, as cautioner for his son, and by the boy himself, was, in other respects, informal. The testing clause stood thus: ' In witness whereof, both the said parties have subscribed these presents, written upon stamped paper by (Signed) Gavin Rymer, shoemaker, and Adam Richardson, ditto.' And below, these names were repeated thus: ' Witness, Gavin Rymer, Adam Richardson.'

The boy continued to serve Rymer till October 1779, when his father, on an allegation of bad usage, took him away from his master's service; upon which

Rymer brought an action against M'Intyre, concluding for the penalty, and for damages.

Pleaded for the defender; The indenture, from its wanting such a proper designation of the writer and witnesses, as is required by the act 1681, cap. 5. is void and null. This statute has not, like 1593, cap. 179, left any room for a posterior condescence; and, as its words expressly declare a writing, so defective, to be absolutely null, no person can reasonably think, that it affords nothing more than an exception which may be tacitly renounced by acts of homologation.

Answered; If defective deeds are not to become valid by homologation, a man's titles to his estate may not, even after the years of prescription, afford him any security. It is only *in nudis finibus contractus*, that the statutory nullities have force. Subsequent approbatory acts remove every objection. Such has been found, by many decisions, to be the effect of implement in tacks and in marriage contracts. Such, too, is the known effect of *rei interventus*. And, surely, the boy's continuing to serve under the indenture for upwards of three years, imports a sufficient homologation; November 23. 1699, Greeson *contra* Scott, *voce* WRIT; January 21. 1735, Telfer *contra* Hamilton, *IBIDEM*.

Observed on the Bench; As, in this case, there is full evidence of an agreement between the parties, there would have been good ground, altogether independent of the indenture, for compelling either of them to enter regularly into a written contract.

THE LORDS, 'in respect of the apprentice's entering into his master's service, and continuing there for three years, by which the indenture was homologated by both parties, repelled the objection of the want of the legal solemnities, made to the indenture.' *See* WRIT.

Lord Ordinary, *Hales*. Act. H. *Erskine*. Alt. *Rae*. Clerk, *Robertson*.
S. *Fol. Dic. v. 3. p. 274. Fac. Col. No 74. p. 128.*

* * * For other cases, relative to the point whether writs defective in solemnities can be supported by homologation, *see* WRIT.

PROOF OF HOMOLOGATION, *see* PROOF.

See APPENDIX.