

When it is understood *purchase*; as it is believed every body concerned at the time understood it in that sense; but, if it was meant that the defender was to give these transmissions for nothing, Why was he not taken directly bound to do so?

No 85.

THE LORDS found, That Sir William Cockburn is bound to communicate the rights and diligences in his person to secure Mr Buchan's purchase; but found, that this obligation doth not extend to Mr Winram, the other purchaser.

But, on the 11th December thereafter, the LORDS found, That Sir William not being a conjunct disponent, his consent imported no more than a *non-repugnantia*; and that he was not obliged to communicate his rights, &c. to secure Mr Buchan's purchase.

C. Home, No 129. p. 214.

S E C T. XIV.

Discharge of Trust.—Settlement of Factory-accounts.—Expenses of plea after extract.

17629. June 11.

Hog against NIVEN.

ONE Niven being executor-testamentary nominated and confirmed to-unquhile Hog testator, and in the same testament the whole gear being left to Mr Thomas Hog, son to the testator, who was left universal legatar by the defunct, so that the executor had only *nudum officium*; and the executor having recovered sentence against some of the debtors named and given up in the testament; thereafter the legatar having convened the executor for payment of the debts given up in testament, it was found that the executor having made the legatar assignee to the decreets obtained by him against the debtors, that he was not further obliged to pay the debts to the legatar, seeing the executor had only a naked office, and the legatar only the benefit; and found that the executor had no necessity to put the decreets against the debtors to execution, either by pointing or horning; neither was obliged to make the debts good, albeit the debtors had become bankrupt, or unanswerable to pay thereafter, they being responsal, if the sentences had received execution; for which the executor was not answerable, nor was obliged in diligence, he being free of all fraud or collusion with the debtors, and he never being desired by the legatar to coneur with him in any act against the debtors; so that the assignation made by the executor to the debts and goods contained in the testament, in favour of the legatar, with all that follows thereupon, was found sufficient, and that the same

No 86.

One whose trust is taken off his hand, cannot be afterwards challenged for neglecting to do diligence.

In this case, an executor, having taken decree against the defunct's debtors, assigned to the universal legatee. The acceptance of the assignation barred challenge for neglect of diligence.

No 86.

extended also to the decreets obtained by the executor, before the assignation, albeit the same bore not 'to be made to the decreets,' seeing it bore 'in and 'to the debts, and all that had followed thereon;' but in this case, the assignation was received and kept a long space by the assignee before he pursued the executor, the debtors being then deceased, who were living the time of the receiving and making of the assignation; likeas the assignee had caused charge the debtors upon his own charges, whereby he had accepted the assignation; and so it was found, that a naked executor, where there was an universal legatar, was not obliged *ad diligentiam*.

Act. Aiton & Miller.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 439. Durie, p. 444.

1683. January 5.

GRAHAM against ROCHEAD.

No 87.

A factor, after having settled accounts, found not entitled to demand salary.

JOHN GRAHAM, chamberlain to the deceased Alexander Murray of Melgum, pursues Janet Rothead, as relict and executrix, for payment of 6000 merks, due to him as chamberlain for several years; and albeit that he was discharged of his chamberlain accounts, yet the same bore a reservation of all sums by bond, ticket, or otherwise due by the pursuer to the defunct.—It was *alleged* for the defender, That the pursuer was only *negotiorum gestor*; and unless paction were proved the time of the entry to his service, he could not pursue the representatives of the defunct for a salary, after the chamberlain accounts were fitted by the defunct, and a discharge granted to the pursuer.—THE LORDS sustained the defence, and assoilzied the defender.

Fol. Dic. v. 1. p. 439. P. Falconer, No 39. p. 21.

. Sir P. Home reports the same case :

JOHN GRAHAM having pursued Janet Ruthven, relict of the deceased Alexander Murray of Melgum, for payment of 6000 merks, as his factor and chamberlain fee, for managing of her husband's estate before his decease; *alleged* for the defender, There was no salary due, because there was none conditioned; and the defunct, her husband, in his own lifetime, did entertain the said John Graham and his children in his house, which must be allowed in place of the fees, seeing her husband never promised him any more but to maintain him in his house; as also, he having counted with her husband, he did grant a discharge of his intromissions, which necessarily implies either there was no salary due, otherwise he would have craved allowance thereof in his accounts; or if there was any due, it was allowed at counting.—*Answered*, That albeit there was no express condition for a salary, yet *ex natura rei*, the pursuer having managed Melgum's affairs for the space of five years, he ought to have a salary, seeing by the law, whoever manages another man's affairs, the party