

1775. December 15. JAMES PENMAN *against* GEORGE PENMAN.

PASSIVE TITLE.

Action transmits against heirs *in valorem* only.

[*Faculty Collection, VII. 152; Dictionary, 9836.*]

COALSTON. This is a small cause, but it involves some questions of law which are important. I doubt whether homologation will validate a deed of the nature of this. Homologation validates any defect in form, and it also removes any ground of reduction; but I doubt how far a deed *ipso jure* null can be homologated. As to the question concerning the widow's intromission with her husband's effects; that indeed is an universal passive title, but I doubt how far it will be good against the heir: he is not liable universally, but only *in valorem*. It is incumbent on the party to prove the value.

COVINGTON. Of the same opinion as to the first point: the widow, if she intromitted universally, was liable to pay the annualrent on her husband's account, as representing him; but this was not an homologation of the deed *quoad* herself. Vicious intromission is a passive penal title, and can go no farther than the person herself: as to the heir, he is only liable *in valorem*.

KENNET. After so long a space has elapsed, I think that the heir ought to condescend to what extent she intromitted.

COVINGTON. That is turning the taciturnity into an argument against the heir, whereas it ought to militate against the other party.

GARDENSTON. It is just that an universal intromission should infer a passive title; but I think that it is also just that this passive title should not transmit against the heir: the creditor who is dilatory in bringing his action, ought to suffer by it.

On the 15th December 1775, "The Lords found the heir liable only *in valorem* of the effects with which the widow intromitted, and that in so far as she had not already paid of the debts of her husband;" altering Lord Kennet's interlocutor.

*Act.* G. Ferguson. *All.* G. Clerk.

*Diss.* Kennet.

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