

No 47.

in that case, he is supposed to have relinquished his claim, he can no longer insist in it, although the other two have taken care to preserve their claims; but where, by one obligation, an individual becomes debtor to three or more creditors, his making payment to one of them, must infer an homologation of the deed *quoad* the whole; because, by so doing, he acknowledges it to be a just deed, and departs from any objection that might lie against it in point of form.

3tio, Although the pursuer does now acknowledge his having made payments after his majority to the two defenders, and only disputes his having made payments after that time, to his brother James; and, therefore, insists that he cannot be liable in payment of what is still due to James, his mode of conducting the cause before the Lord Ordinary was very different. His plea was then directed against the shares of the two defenders; and he accordingly admitted, that he had made payments, after his majority, to his brother James. That he cannot now be allowed to retract. But it is the less necessary to insist upon this point, since the payments made to their mother, on her own and the defender's account, must be considered as a homologation of the bond *in toto*; and must, therefore, equally bar the pursuer from bringing it under challenge, so far as concerns the interest of his brother James.

' THE COURT adhered to the Lord Ordinary's interlocutor.'

Act. R. Macqueen.

Alt. Wight.

Clerk, Tait.

Fol. Dic. v. 3. p. 272. Fac. Col. No 99. p. 255.

1776. December 17. RIG against DURWARD and THOM.

No 48.
Lease of lands
*ubi dolus dat
causam*, homo-
logated by
payment of
rent.

RIG, who was under contract to furnish stones for paving the streets of London, took a lease from Durward of a piece of ground which the latter assured him contained stones of the best quality, and of which the lease had been eagerly requested by many people on that account. Rig held the possession for three years and paid the rent, but after laying out above L. 50 in experiments, found the stones were good for nothing. Durward becoming bankrupt, and having disposed this lease with his other effects to his creditors, Rig brought a reduction of the same on the head of fraud. The defence was, homologation, by continued payment. THE LORDS repelled the reasons of reduction. See APPENDIX.

Fol. Dic. v. 3. p. 272.