

filler up of the witnesses' names and designation, as has been often found, nor of the creditors or disponees names; and as to the act 1696, that it did not appear that it was blank at subscribing; *2do*, that it must have been filled up at taking the sasine in 1621 before delivery; *3tio*, homologated by the deed in 1722. Replied, The creditor or donee's name is now an essential part of the deed; *2do*, its being filled up by a different hand than the writer of the rest of the deed, must throw the *onus probandi* on the receiver; *3tio*, not sufficient that it was filled up before delivery, unless done before the same witnesses; *4to*, homologation cannot make that a valid deed, and therefore is no defence, unless it were of itself sufficient to convey the lands. I thought, and most of the Lords seemed to think, the answer to the act 1681 good; but the President thought, that since the act 1696 made the donee's name an essential part of the deed, that the writer or the inserter of it became necessary by the act 1681. But by the same argument, so would the filler up of the witnesses' names and designations, which are made essential by that same act 1681. We found that the *onus probandi* lies on the defender, that the blanks were filled up before subscribing, or before the same witnesses, and in that we were unanimous; and the blank that remained in the very last lines immediately before the subscriptions had great weight with some, particularly Drummore; and we repelled the homologation; in which indeed I differed, for we have often sustained homologations of deeds labouring under statutory nullities, as the want of the writer's name and designation, or that of the witnesses; and I was not quite satisfied with the destination, that these concerned the deeds being probative, which therefore might be supplied by the granter's acknowledging it in an after solemn deed; whereas the acknowledging his having granted this deed blank which he afterwards filled up, would not make it a valid deed against the act of Parliament; but was not this destination in effect a ratification of the former? 12th July Adhered.

BONA ET MALA FIDES—BONA FIDE PAYMENT.

No. 2. 1736, Feb. 17. YORK-BUILDINGS COMPANY *against* GARDEN.

THE Lords sustained the defence of *bona fide* payment, in respect the payment was made without collusion after the legal term, though before the conventional term.—N. B. The Lords in the interlocutor avoided using the words "legal term," and used the words "the term of Martinmas."

No. 3. 1736, Jan. 13. July 1. 25. DALRYMPLE *against* DALRYMPLE.

THE Lords adhered to the Ordinary's interlocutor.

No. 4. 1738, Jan. 26. CORSAN and RAE *against* MAXWELL.

See Note of No. 16, *voce* ADJUDICATION.