

No 83. gacies: That Andrew had a separate right to the lands, which he virtually made use of when he compelled William to grant the renunciation in question.

*Answered* for the pursuer; That deeds executed upon death-bed are not *ipse jure* null, but only reducible at the instance of the heir: That William, by conveying the procuratory to Andrew, subjected himself to payment of the legacies; and Andrew, by accepting of this conveyance, became bound as his successor whatsoever. He undoubtedly accepted of the deed, because he took infeftment on the precept of sasine therein contained; and upon that title possesses the lands of Rashiegrain to this day: That the declaration contained in the disposition cannot be regarded; for that the defender cannot pretend to take advantage of the disposition, and at the same time refuse to submit to the burdens therein contained.

“ In respect that Andrew Anderson made up his titles to the lands upon the disposition in question, and possesses thereupon, therefore find him liable to the pursuer in payment of the legacy of L. 50 Sterling, with annualrent and penalty, as contained in the disposition made by Rashiegrain.”

Act. *Sir David Dalrymple.* Alt. *Swinton.* Clerk, *Kirkpatrick.*  
P. M. *Fol. Dic. v. 3. p. 272.* *Fac. Col. No 233. p. 426.*

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## SECT. VIII.

Homologation of part, whether Homologation of the whole.

No 84. 1607. March 4. LORD INCHAFFRAY *against* OLIPHANT.

A DECREE arbitral being partly *ultra vires*, this nullity will not invalidate the decree so far as *intra vires*, nor will the parties obtempering the decree, so far as effectual, be understood a homologation of that part which is null.

*Fol. Dic. v. 1. p. 382. Haddington, MS.*

\* \* \* See this case, No 1. p. 5063.

No 85.  
Homologation of a decree arbitral

1662. November 22. PRIMROSE *against* DUIE.

PRIMROSE having pursued a reduction of a decret arbitral betwixt him and Duie, the said Duie *alleged* homologation of the decret, by acceptance