

swered that all bargains may be made under such conditions as parties agree upon, and there can be no reason why the stipulation in favour of the superior in this case should not be effectual: That although the sale may not irritate Miller's right, yet still the superior has a right and interest to reduce the sale, which is injurious to him, and contrary to his privilege of pre-emption: That the case is the same as happens in tacks with clauses secluding assignees, for though the assignation of such tacks will not irritate the right of the cedent, yet it never was doubted that the proprietor might reduce the right of the assignee."

The Lords altered the Lord Ordinary's interlocutor. Lord KILKERRAN has the following note of the grounds of the judgment.

"December 29, 1756.—The Lords altered the Ordinary's interlocutor, and preferred Johnston.

"They were not moved with the observation, that the prohibiting clause was not in the seasine, for the seasine referred to the clause which was *in eodem corpore juris*, and the infeftment consists of the charter and seasine. Nor were they moved with the arguments from the late act of Parliament, which does not forbid rights of pre-emption; but what they went on was this, that there was no irritant clause in case of contravening the prohibition. It is a principle in law, that a proprietor must have a power to dispose, and he remains proprietor until his right be irritated.

"The Ordinary, who alone argued and voted for adhering, agreed in the principles, but put it on the *mala fides* of the singular successor. He said that Miller was in *pessima fide* to transgress the prohibition, and as the purchaser knew it, he was *particeps*; but the answer to this was, that as he knew of the prohibition, so he knew it was ineffectual in law."

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1757. January 4. ROBERT SHEDDAN *against* JAMES MONTGOMERY SHEDDAN, a Negro.

THIS case is reported in *Fac. Coll.* (*Mor.* 14,545.) Lord KILKERRAN has the following note upon the papers.

"The Lords generally inclined to find that the negro was not manumitted by his being brought to Scotland, but agreed to pass this bill, that the point might be in the most solemn manner determined; and on a further motion for the negro, a hearing in presence was appointed.

"January 4, 1757.—*Mors ultima linea rerum.* There the servant shall be free from his master.

"The poor young man is dead, and so has put an end to the question, what influence Christian charity or love to our neighbour, whatever his colour is, ought to have."