

The father and husband not being sole contractors, but the wife, they could not, after the contract and marriage, without her consent, alter her right. To the *third*, The creditors lending their money, *bona fide*, cannot prejudge the relict's right; for *bona fides* operates only in payment made, and other necessary deeds, but not in voluntary acts, as lending money, wherein the lender must follow the faith and condition of the borrower, whose rights, though never so clear in any record, yet if thereafter they be improven or reduced, the creditors' *bona fides* avails nothing; and though the relict made use of the contract vitiated, yet it was with reclamation against the vitiation; and therefore in the decret, the same is reserved, which is the ground of this declarator. To the *fourth*, The relict craves not the repetition of the fruits uplifted by the creditors; but only that the ground may be pointed for what she wants of bygones. To the *last*, By no practice was ever a wife prejudged, by not payment of the tocher; and albeit the father's being insolvent, might have been a ground to the husband to refuse to infest his wife; in any more than the annual rent of 7000 merks, till the tocher were paid; yet where he has actually infest her in more, and even before contracting of the creditor's debt, her infestment must stand valid, seeing it was less than what was her right.

THE LORDS found the vitiation of the contract to have been after the marriage, and sustained the declarator, and ordained the ground to be pointed for what she wanted of her infestment of 700 merks for bygones, and for the whole in time coming, unless it were proven by the wife's oath, that she consented to the alteration of her contract.

Stair, v. 1. p. 678.

S. E. C. T. II.

Private Knowledge of a Prior Right.

1582. June. STIRLING against WHITE and DRUMMOND.

PRIVATE knowledge of a prior assignation was so far found sufficient certification, as to put another in *mala fide* who obtained a second.

Fol. Dic. v. 1. p. 105. Colvil, MS. p. 152.

* * * See The particulars *voce* INTERDICTION.

1627. July 21. HAMILTON against M'CULLOCH.

THOMAS HAMILTON having apprised certain lands from William M'Culloch of Myrton, in payment and satisfaction of certain sums of money owing by the said William to the pursuer: After his apprising, and long before the comprifer

No 4.
An apprising upon which no diligence proceeded for many years, found

No 2.

No 3.

No 4.
not to induce
any *mala fides*,
so as to pre-
vent a subse-
quent volun-
tary disposi-
tion from be-
ing effectual.

took *saſine*, Myrton ſold a part of the ſame lands to Thomas M'Culloch, who was infeſt therein, and in poſſeſſion by virtue thereof. Thomas Hamilton intended a reduction of this diſpoſition and infeſtment made to Thomas M'Culloch, in reſpect that it was made after the comprifing, by which the analzier was ſo denuded of all the right and title he had, that he could not afterwards make diſpoſition thereof in prejudice of the comprifer.—*Answered*, That the reaſon of reduction was not relevant, becauſe nothing had followed upon the purſuer's comprifing for the ſpace of ſix years, which might have put the defender in *mala fide* to buy the ſame lands from Myrton, viz, neither inhibitions executed, nor *ſaſine* taken upon his comprifing.—*Replied*, That the denunciation of the lands to be comprifed was a public deed, which, with the comprifing following thereon, not only denuded the analzier of all right he had, but alſo put all others in *mala fide* to take any diſpoſition from him of theſe lands, otherwiſe there ſhould be no difference between a comprifing, (which is real) and a contract of alienation.—
THE LORDS, in reſpect of the long time that intervned between the comprifing and *ſaſine* following thereon, during which he had done no diligence to get himſelf infeſt upon his own comprifing, Found the reaſon of reduction not relevant. But, if the comprifer had been infeſt ſoon after his comprifing, or yet had charged the ſuperior, or done other diligence to get himſelf infeſt, the reaſon would have been thought moſt relevant to reduce on.

Spottiswood, p. 43.

No 5.

A public infeſtment was given to a man and his wife in conjunct fee. A baſe infeſtment to a third party intervned before confir-
mation. The effect of the confirmation drew back to the date of the public infeſtment, becauſe the baſe infeſter had acknowledged the conjunct ſiar's right, by ſtipulating for her conſent to his right.

1629. February 4.

HOME of Aiton *againſt* HOME.

THE young Laird of Aiton and the Lady purſuer, then his contracted ſpouſe, by contract of marriage betwixt them, wherein old Aiton was obliged to infeſt the young Laird and his future ſpouſe in conjunct-fee, in the lands of Hundwood, to be holden of the ſuperior, and conform thereto they were infeſt; after which infeſtment granted ſo to be holden, and before the ſame was confirmed by the ſuperior, the old Laird and the young ſell the lands to another, to be holden of themſelves; and, in the contract of alienation, the buyer takes them obliged to procure the young Laird's wife, now purſuer, her conſent to the alienation, and her ratification thereof in judgment; and upon this contract the buyer is infeſt holden of the analzier, and by virtue thereof, in poſſeſſion thereafter two or three years; and before the young Laird's deceaſe, that infeſtment given to him and his wife, is confirmed. After the huſband's deceaſe, ſhe purſues for the duties of the lands, by virtue of her ſaid infeſtment of conjunct-fee; and the relict of the buyer of the lands, ſhe being tercer, defending with the ſaid infeſtment granted to her huſband, and his poſſeſſion, and that the purſuer's rights and her huſband's were null, being given to them to be holden of the ſuperior, and not confirmed before her huſband's right acquired for great ſums;