

No 17.
was found effectual, but the profits were found to be *bona fide* consumed in the mean time by the other.

James Law for the profits of the office, these years wherein Mr James bruiked the office before the reduction; from the which pursuit, the LORDS affoizied the defender, because the defender was provided to the office for these years, and served therein *bona fide*, and so ought to have the casualties thereof for his service, the pursuer neither having served in these years, nor having made any interruption to the defender, but being all that time silent; and albeit that deprivation was reduced *ab initio*, yet the Lords found it not enough to produce this action, seeing that reduction was not intended till after the years libelled, for the which the defender was convened, in the which years he had served *bona fide*, as said is; which the Lords found sufficient to elide this pursuit.

A.R. ———.

Alt. Nairn.

Clerk, Hay.

Fol. Dic. v. 1. p. 108. Durie, p. 111.

1635. February 19.

CUNNINGHAME against STUART.

No 18.
In a special declarator of a rebel's life-rent escheat against an intromitter with his rents, by right granted after rebellion, the plea of *bona fide* consumption was sustained till citation.

ONE Cunninghame, made donatar by George Rome, to the liferent escheat of Robert Neilson, of the lands of ———, which were holden of the said George Rome, after general declarator, recovered against the said Robert Neilson; in a special declarator he pursues one Stuart, intromitter with the duties and profits of the saids lands, for refunding of the same to the donatar, of all years since the said rebel was year and day at the horn, viz. continually since the year 1615. And the defender *alleged*, that he was infest in the said lands by the said rebel, and by virtue thereof uplifted the profits of the lands *bona fide*, which being now consumed, and he never interrupted by any special citation, he ought not to be compelled to refund the same; and the donatar opposing the horning, which preceded the defender's infestment, and which put the rebel and all the lieges in *mala fide* to do any deed thereafter in prejudice of the superior, for the casualty of the liferent; especially also there being a general declarator recovered against the rebel's self, which declares the right in effect to pertain to the superior, since the time that he was year and day rebel: THE LORDS found the allegiance relevant to exclude this pursuit, for all the bygone years duties acclaimed, which the Lords found to have been *bona fide* uplifted and consumed by the defender, who was never interrupted by the superior, nor his donatar, in the possession of the same; for albeit the defender's infestment was made by the rebel to him, after he was rebel, yet the same was sufficient for the saids by-gones, intromitted with by virtue thereof, wherein he was not interrupted, albeit it would not defend for the time to come, since the time of his special citation in this special declarator; but found the said infestment sufficient to liberate him for all the years before this his special citation, in this particular declarator, and that he was not interrupted, neither by the process, nor decret of general decla-

rator, whereto he was not specially called, and so no respect was had thereto, and the same was also only lately recovered in *anno* 1634. Therefore he was affoilzied from the bygones; for he could not be in any worse case than a tenant, who paid his farms yearly to his master, albeit rebel, yet not being specially intimated to him, that payment would ever have freed him from the donatar for bygones. *Item*, THE LORDS found, that the liferent pertained to the same pursuer's author, albeit the rebel was not rebel a year since he acquired the right of the superiority; for the Lord Sanquhar was superior the time when the rebel was at the horn year and day; and before he sold the lands to Rome, the rebel was relaxed: Whereupon it was *alleged*, that Rome could not have right to the liferent of the vassal, who, since his right, was not rebel, being relaxed, as said is, before his right: Which allegiance was repelled, seeing the vassal was rebel a year unrelaxed, which made his liferent fall to his superior; and seeing the Lord Sanquhar was superior when it fell, and that he sold all his right which he had to the lands to Rome, and had not gifted that casualty before to another; they found that it pertained to Rome, notwithstanding that the vassal was relaxed before the right was acquired by him, seeing the year was expired before he was relaxed. See IMPLIED ASSIGNATION.

A. & ———.

Alt. Gilmore.

Clerk, Scot.

Fol. Dic. v. 1. p. 107. Durie, p. 756.

1635. December 2.

HUME against LA. HADINGTOUN.

GEORGE HUME, son to Sir George Hume of Manderston, being infeft in the lands of Slegden, pursues the Lady Hadingtoun for payment of the duties of the saids lands, for some by-past years; and she *alleging*, that she had lent 5000 merks to the pursuer's father, for the profit and security whereof his father put her in possession of the lands, conform whereto she uplifted the duties thereof the years by-past, now acclaimed, and received acquittances thereupon from the father, who is, in law, administrator to his son, the son being for these years minor, whereby for these bygones she must be liberated, having done that *bona fide*, the son's right never being intimated to her; and the father having purchased the right of the lands himself, without putting the son's name in the security, to whom also he was administrator in law, which gives him right to intromit with the son's estate. And the pursuer *answering*, that his father, albeit he were administrator, yet by that title he can have no right to meddle with the rents, especially to convert the same for payment of his own debt, which is not in law admissible; so that the defender hath her action of warrandice, or other pursuit, against the father, as in law may be best competent to her for repetition thereof, or for recovery of her debt; but it cannot defend her against this pursuit.—THE

No 18.

No 19.

A father had put a creditor in possession of lands belonging to his son, for whom he was administrator. *Bona fide* consumption was sustained to the creditor till the son's right was intimated.