

the interlocutor is adhered to: *There* the Court refuses the petition, and adheres; they adhere simply, and with all the qualities attending the interlocutor, particularly as to its date, in which respect, it is considered in the same light as if no petition had been presented.

No 43.

Answered: The defender is accountable only from the date of the judgment of the House of Lords. His *bona fides* cannot be held to have ceased at any earlier period, unless it could be shown, that the original citation was sufficient to interrupt it. *Bona fides* is excluded by the *conscientia rei alienae*; but, as the question was of too doubtful a nature to allow the presumption that such consciousness was induced by the citation, so there is real evidence, that the defender did not entertain it during the dependence; otherwise he would not have submitted to the expence of litigating the question, both in this Court, and in the House of Lords.

'THE LORDS found, That the defender is bound to account for his intromissions with the rents of the lands, from the term of Martinmas 1764, being the term subsequent to the interlocutor of the Court, adhering to that of the Lord Ordinary.'

A&G. Ferguson.

Alt. Wight.

G. Ferguson.

Fac. Col. No 44. p. 347.

S E C T. IX.

With what Modifications *Bona Fide* Consumption Saves from Repetition.

1610. July 18.

JOHNSTON. against IRELAND.

No 44.

HE who has obtained a decret in a double pouding, for a principal sum and byruns, against a party not compearing, so long as the decret stands unreduced, he will bruik the duties received; because the decret and act of Parliament make these duties to be *fructus bona fide perceptos*; but he may be decerned to pay back the principal sum, being pursued to that effect, albeit the decret of double pouding be not reduced; if the party who was absent now pursuing show manifestly that the party that received it had no right.

Fol. Dic. v. 1. p. 107. Haddington, MS. No. 1971.

1683. January.

LADY HISLESIDE. against BAILLIE of Littlegil.

No 45.

FOUND, that an apprising extinguished within the legal, by the debtor's disposing a part of the comprised lands, coming in the person of a singular successor to the

No 45.

appriser, might be *titulus bonæ fidei* against repetition of the fruits intromitted with by the singular successor, unless the rights and progress in his own hand did instruct and narrate, that the apprising was satisfied ; but found, that though such a singular successor would be safe against repetition, yet, if there was another debt due to him the time of his intromission, by the party whose lands were apprised, it ought to be applied towards the satisfaction of that debt.

Fol. Dic. v. 1. p. 107. Harcarse, (COMPRISING.) No 284. p. 67.

No 46.

The Lords found a comprising extinct within the legal, but retained a minor in the possession ; *quia minor non tenetur, &c.* Being pursued after majority for by-gones, he was held to be a *bona fide* possessor.

1684. December 9.

FALCONER of Kincorth against KINNIER.

— FALCONER of Kincorth's case *contra* Kinnier is advised. It was *alleged* against a comprising led in 1622, that it was satisfied and paid by intromission within the legal ; and probation being led thereon, by virtue of a commission to Mr James Inglis in 1673, and the same advised, the Lords found the comprising proven to be extinct by satisfaction ; but, in regard it was *alleged* then that Kinnier was minor, they stopped to put him out of possession, because of the maxim *quod minor non tenetur placitare super hæreditate paterna* ; but ordained him to find caution for the superplus more than paid him, if there should be any. He being now major, raises a reduction of that report, on this reason, that the depositions do not bear that the witnesses were examined by these formal words, ' As they shall answer to God.' And though they be subscribed by the judge, yet they are not signed by the witnesses ; nor does the report bear that they could not write. *Answered*, These are not nullities, and the probation is already advised ; and the witnesses are all since dead, and so it cannot be loosed now. — THE LORDS adhered to the said report, and would not loose the depositions now after so long a time, and that the mean of probation was perished. *See* WITNESS.

The next question was, if he was *bonæ fidei possessor quoad* the bygone rents ? The Lords inclined to find him so, because of the brocard *non placitare tenetur* ; yet he was *alleged* to be *in mala fide*, because of the caution he was put under.

Fol. Dic. v. 1. p. 110. Fountainball, v. 1. p. 318.

1685. January.

JOHN CALDWELL against CHRISTIAN JACK.

No 47.

An aliment, although erroneously awarded, was held to be *fructus bona fide consumpti* ; and repetition denied.

A RELICT having pursued her husband's apparent heir for implement of her contract of marriage, he repeated a summons of aliment by way of defence, upon this ground, that the whole estate was liferented ; and the Lords did modify an aliment to him, of which a reduction was raised several years after, as being exorbitant, and proceeding upon misrepresentation, that the wife's jointure was great, whereas it was but an annuity of L. 700, out of which 700 merks, two-thirds thereof, was modified for the heir's aliment.