

—They have the benefit of a possessory judgment by virtue of an infestment on a comprising ; and so it must stand good till it be reduced.

ANSWERED,—There was an old Act betwixt them in 1667, ordaining Littlejohn to count and reckon ; which interrupted the *bona fides*.

REPLIED,—*Imo*, That count and reckoning was now sleeping these many years, and behoved to be wakened. *2do*, They had attained the benefit of a new possessory judgment since that.

The Lords found no possessory judgment in this case, and sustained process. The words are:—Find no need of wakening or transferring the same, and therefore, conform to Lord Carse's decerniture, ordain the Act of count and reckoning to be extracted, and a diet to be appointed for that effect before the auditor in the said count and reckoning.

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1685 and 1686. SIR DANIEL CARMICHAEL *against* SIR JOHN WHITEFORD.

1685. *December 17.*—The Lords heard the case between Sir Daniel Carmichael and Sir John Whiteford of Milnton, anent a seasine which is marked by the clerk of the register of seasines as registrate, but when the registers are searched, there is no such seasine found inserted or recorded there, nor in their minute-book ; so it was ALLEGED to be null, because all that buyers and singular successors are bound to do, is to search the registers, and, if they find nothing there, they are *in bona fide* to buy or contract. On the other hand, it was contended, that the seasine must subsist in law, because all that can be done by one that is infest, is allenarly to give it in to the register ; and when he gets it back marked registrate, he is neither obliged nor concerned to see it actually registrate ; but any who are prejudged have action of damage against the keeper.—See for this, Stair's Institutions, *tit. 13, § 22.*

The Lords having advised this narrow point on the 23d of December, they found Milnton could not quarrel his father's seasine as null on that head, that so he might have access to annul Sir Daniel's right as flowing from his father who was not infest. And though the Lords were pressed by the lawyers to determine if it was null in general, yet they shunned it. So Milnton will cause one of his own creditors quarrel it, and then the Lords will be put to decide the general point ; anent which, *vide 25th March 1686.*

This is now determined by the 19th Act of Parliament 1686.

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1686. *March 25.*—Whiteford of Milton's creditors their reduction, for annulling his father's seasine, that so Sir Daniel Carmichael's right might fall in consequence, (anent which, *vide 17th December 1685,*) was decided. Their first objection was, that though it be marked registrate, yet it is not truly registrate ; and though three of the witnesses in the seasine depone *non memini*, yet the Lords sustained the seasine, because, by a bill to the Exchequer, it appears Sir John Whiteford had founded on this seasine.

This was an unnatural action, to tash his father's memory with a design of cheating.

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