

1695. November 16.

SIR ROBERT BAIRD of Saughtonhall *against* JAMES LAW of Hillhousefield.

IN advising the concluded cause, Sir Robert Baird of Saughtonhall against James Law of Hillhousefield, for a spuilzie of teinds, it occurred to be reasoned among the Lords, if seven years possession of teinds, by virtue of a disposition without infestment, might give the benefit of a possessory judgment, seeing some right of teinds may be conveyed without infestment, as by tacks, prorogations, &c. But the LORDS thought it could not plead that benefit. *2do*, It was *alleged* by the defender, he had a renunciation from Sir Robert the pursuer, of all claim he could pretend to his lands or teinds: *Answered*, That renunciation was in so far as extended to a comprising standing then in his person, and there was no more deduced nor narrated, and he had other rights. THE LORDS having compared the deduction of the title with the renunciative part, they found it could extend no farther than to the title expressed, especially seeing the transaction followed after a debate on that apprising only. *3tio*, The defender offered to reform to his allegiance, and propone it in different terms from what it stood in the act of litiscontestation; which the LORDS would not allow, it being a judicial contract; and if he had proponed his defence in that manner *ab initio*, the pursuer might have elided it by a reply, which he cannot prove now.

*November 23.*—IN the pursuit at the instance of Sir Robert Baird against James Law, mentioned 16th current; on a new hearing, the LORDS thought, though the defence of a possessory judgment was not sufficient in this case, yet his long possession by virtue of a colourable title was enough to make him *bona fide* possessor as to bygones. The only question was, when his *bona fides* was to be reputed interrupted; whether from the date of the citation in this process of spuilzie, or from the inhibitions, or the act of litiscontestation, or the sentence? THE LORDS found the renunciation of Spence's apprising in his favour was so dubious a case, that he was not *in mala fide* till the date of the Lords' interlocutor, finding that renunciation did not comprehend all rights in Sir Robert Baird's person; so this made the case little different from the sustaining the benefit of a possessory judgment; for that would only have lasted till Sir Robert had prevailed in his reduction on his preferable right; by which it appears how much the extension or termination of a possessor's *bona fides* is *in arbitria judicis*.

*Fol. Dic. v. 2. p. 88. Fountainhall, v. 1. p. 678, & p. 680.*

1705. July 5.

ANTHONY and ZEROBABEL HAIGUES, Elder and Younger of Bemmerside, *against* Mr THOMAS HALYBURTON of Newmains, and MARGARET RUTHERFORD His Mother.

ROBERT HAIGUE of Bemmerside having, in his daughter's contract of marriage with James Halyburton, heritor of the Abbey-Mill of Dryburgh, astrict-

No 9.

Seven years possession of teind in virtue of a disposition without infestment cannot give the benefit of a possessory judgment.

No 10.

A possessory judgment and seven years possession of a thirlie mill