

1770

BONA FIDE CONSUMPTION.

SECT. 9.

No 50.

cerned in name of damage against one merchant in favour of another; because, by the nature of their employment, the one is supposed to have trafficked with the money, and the other wanted the subject of his trade.

THE LORDS assoilzied the defender from annualrent.

Forbes, p. 178.

1715. January 21.

COLONEL JOHN ERSKINE against SIR GEORGE HAMILTON.

No 51.
Bona fides saves from repetition of super-intromissions after extinguishing any extinguishable right in the possessor's person.

IN the competition betwixt these parties about the lands of Tulliallan, the LORDS having, by interlocutor of the 17th of February 1714, (which is marked with the whole state of the case in the Journal of that Session*), found Sir George Hamilton's possession ascribeable to the preference in the decret 1682, grounded on the Earl of Kincardine's disposition in 1678, until Sir George founded on his other rights to support that disposition, and that he did found on his other rights for supporting that disposition in the month of July 1701; and therefore found him accountable since the said month of July 1701, and that his possession and intromission ought to be imputed to extinguish the said separate rights accordingly: Upon a reclaiming bill given in this day by Sir George, and answers for the Colonel,

THE LORDS adhered to the former interlocutors and deliverances, finding Sir George accountable for his intromissions since the month of July 1701, *ad hunc effectum* only, for extinguishing his rights, but not for repetition of superintromissions; and refused the desire of the petition accordingly.

For Colonel Erskine, Ro. Dundas.

Alt. Graham.

Clerk, Mackenzie.

Bruce, No 34. p. 44.

1720. January

WALKER against M'PHERSON and FORRESTER.

No 52.

AN adjudication, long after the expiry of the legal, being restricted to a security, because more was adjudged for than due; the LORDS found the rents intromitted with, after expiry of the legal, while the adjudger *bona fide* considered himself as proprietor unaccountable, did yet impute to extinguish the adjudication.

Fol. Dic. v. 1. p. 107.

* * See The particulars, voce ADJUDICATION, p. 302.

1722. June 22.

RUTHERFORD against CROMBIE.

No 53.

AN adjudger, after the expiration of the legal, entered to the possession of the lands. The adjudication was afterwards reduced to a security on account of

* Examine General List of Names.