

SECT IV.

Effect of Sequestration as inducing *Mala Fides*.

1744. December 7. CREDITORS of BUCHANAN against ANDERSON.

PATRICK ANDERSON, Comptroller of the Stamp Duties in Scotland, bought from James Buchanan, wright in Edinburgh, a house in the Canongate for L. 130 Sterling, of which he paid L. 30, retaining L. 100 till incumbrances should be purged; and a minute of sale was executed, 14th February 1729. On this personal right he entered to the natural possession, and afterwards let the house to tenants; but, since Whitfunday 1742, it remained unset. James Buchanan having died in debt, his estate, and as part of it, this house, was adjudged by John Ruffel, writer in Edinburgh, trustee for the creditors; and, in 1739, a sequestration was obtained, and Mr Ruffel made factor, who pursued Mr Anderson for mails and duties, and he defending himself as a *bona fide* possessor, the question was only about the rents since the sequestration.

Pleaded for the defender, The sequestration was no interpellation to him; suppose he had been tenant to Mr Anderson, he might have continued to have paid him his rent, till stopped by a process of mails and duties, and his title of property must in like manner protect him.

2dly, After Whitfunday 1742, he cannot be liable, the house remaining empty without his fault.

Pleaded for the creditors, Mr Anderson very well knew the sequestration; he is much overpaid his L. 30, and therefore has no reason to complain in being made liable since that, though the rents received before may be the subject of an after question: His minute bears no assignation to mails and duties; nor was it a title to possess; and if his claim were to be sustained, he ought at least to be deemed to pay the interest of the purchase money to the creditors.

2dly, He ought to pay notwithstanding the house standing empty, since he entered to possess without any title of property, and did not give up the same on the sequestration.

THE LORDS sustained the defence of *bona fides*, notwithstanding the sequestration.

A.S. Lockhart.

Alt. Wedderburn.

Clerk, Kilpatrick.

Fol. Dic. v. 3. p. 95. D. Falconer, v. 1. p. 17.

No 15.

A person bought a house, paying a part of the price, and retaining the rest, till incumbrances should be purged. Meantime the subject was sequestrated, in consequence of adjudications against the seller. The purchaser found in *bona fide* to let the house, and uplift the rents, till citation in a process to account.