destination, the owners would have suffered the damages. I cannot think that the master of a ship may alter the voyage at pleasure. There is a good deal of equity here as to the master. The navigation of the new voyage was not more hazardous. The master might alter, upon taking proper precautions; and so he did, by obliging Mr John Alexander to warrant all damages. The question is, Whether the damages here incurred be within the obligation?—And I think that they are.

KENNET. Messrs Alexander were in fault by not having the sugars ready. This occasioned the deviation; and Mr John Alexander, Grenadas, became bound for the damages.

BARJARG. The letter from Mr John Alexander relates to all damages.

JUSTICE-CLERK. The principles of the petition are solid, if they will apply to the present case. After the option of the voyage was once made, the affreighters had nothing to do but to perform the voyage, and, after waiting the stipulated time, to take a protest and return home. This would have entitled them to the freight covenanted. It was not discretionary to the master to undertake a voyage quite different. The master seems to have been sensible of the loss which might accrue to Messrs Alexander from paying freight for an empty ship; and, therefore, in order to accommodate them, he enters into another contract, but, at the same time, takes an obligation to indemnify, which will answer as to every loss.

AUCHINLECK. There was no obligation on the master to go to Carolina. Had he gone thither without an obligation to indemnify, he would have been liable for the accidental disasters arising on the voyage.

ELLIOCK. I think that the Messrs Alexander came in the place of insurers; and that insurers would not have been liable for the unforeseen detention at Carolina.

On the 2d March 1769, The Lords found Messrs Alexander liable for the damage arising from the ship being detained at Carolina.

Act. A. Lockhart. *Alt.* W. Craig. *Reporter,* Pitfour. *Diss.* Elliock, Gardenston.

1769. *June* 21. MRS MARGARET LAURIE of Redcastle *against* ALEXANDER SPALDING of Holm.

BONA FIDE CONSUMPTION.

From what period a *bona fide* possessor is accountable?

[*Faculty Collection, VI.* 347; *Dictionary,* 1764.]

MONBODDO. The case of this purchaser exceedingly favourable; for he in effect purchased upon an interlocutor of the Court. I must, however, find the

law to be as it has been laid down by this Court and by the House of Lords. The question is, When did the *bona fides* cease? This is settled, by the Roman law, from the time of *lis contestata*: and it is a rational rule; for every man is presumed to understand the law. And when a case is once fairly stated, the defender, if he fails in the end, is presumed to be sensible that his cause is bad. Our practice, it is true, goes not so far; but I think that *bona fides* must cease from the date of the interlocutor of the Ordinary. In the case of *Pitrichie*, *bona fides* was found interrupted by the first interlocutor of the Lords: but that does not impinge upon my principle; for that interlocutor, from the form of proceeding, happened to be the first interlocutor in the cause.

PITFOUR. I cannot adopt the maxim of civil law, that every man is presumed to know the law. We see the opinions of Ordinaries to be often doubtful, or corrected by the Court; and even the opinion of the Court to be corrected on a rehearing. Were the rule of the civil law to be adopted, a citation, or even a demand, would interrupt *bona fides*.

PRESIDENT. The question as to the ceasing of *bona fides* has ever been, and will be, arbitrary. So far seems clear, that, when a question occurs as to a point of law, the party is entitled to take the opinion of the whole Court. The question as to *bona fides* is in itself arbitrary;—it may cease from citation. In *Pitcaples'* case, it was found not to cease until the judgment of the House of Peers.

On the 21st June, "the Lords found the defender accountable from the first term after the first interlocutor of the whole Lords," adhering to the interlocutor of Lord Justice-Clerk.

Act. G. Ferguson, R. M'Queen. *Alt.* A. Wight.

1769. *June 27.* THOMAS CARNEGIE of Craigo, and OTHERS, *against* JAMES SCOTT of Brotherton.

SALMON FISHING.

Construction of Cruives and Cruive Dyke.

[*Faculty Collection, IV.* p. 185; *Dictionary*, 14,293.]

BARJARG. If the channel is so rough with loose stones, as represented, it would be hard to require the cruives to be sunk lower down: we ought to take the medium as to loose stones. As to taking out the inscales, it is of no consequence: they may be put in from above, even in speats. So there is nothing impracticable in what the pursuers propose: but, if they are fairly fixed back, the consequence will be the same. Number of cruives is of great moment: it should be kept up as from time immemorial, *for a solid dyke* was never meant