

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-intro-  
missions after  
extinguishing  
any extin-  
guishable  
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.

informalities, and the legal laid open. The adjudger was not considered to have consumed *bona fide* the previous rents, but was found liable to account, in order to extinguish the grounds of debt.

*Fol. Dic. v. 1. p. 107. Session Papers in Advocates' Library.*

No 53.

1732. February.

BALFOUR *against* WILKINSON.

THE legal of an adjudication was expired many years before, in a reduction, it was laid open.

It was found, that the adjudger was liable to account for his intrussion prior to the decree opening the legal, in order to extinguish the debt; but not to the extent of repetition. The plea of *bona fide* consumption was attempted, but repelled.

*Fol. Dic. v. 1. p. 107. Session Papers in Advocates' Library.*

No 54.

1746. December 18.

LADY BALMERINO *against* THE CREDITORS.

THE Creditors of James Lord Balmerino being about to confirm his testament, application was made to the Commissaries by his relict, that there should be omitted out of the inventory a sum of L. 97: 5s. Sterling taken out of his repositories, and delivered to her upon receipt, to be accountable therefor, and *bona fide* expended by her in the maintenance of the family, from 5th January when my Lord died, till the next term, as by judgment of the Court of Session was allowed to the relict of Mr Hugh Murray Kynnymound, who had also expended a sum lying by him, in the maintenance of the family.

The Commissaries refused this demand, and she presented a bill of advocatation; to which it was *answered*, That the cases were not similar; for that in the one the money was in possession of Mrs Murray, before her husband's decease, and might be by her applied *bona fide*, equally with any provisions laid in for the family; but in this it was taken out of the defunct's repositories on receipt, to be accountable; so that there could be no *bona fides*; and if this claim were allowed, it would have the effect of making the maintenance of the family a preferable debt.

*N. B.* The interlocutor in Mrs Murray's case ' found the aliment to the family to be a debt, though not a preferable debt upon the executry; but found, that money in Mrs Murray's hands, being *bona fide* applied to the maintenance of the family to the next term after Mr Murray's decease, she could not be bound to repeat the same. See HUSBAND and WIFE.

Some of the Court *observed*, That by the act of sederunt 25th February 1692, money ought only to be taken out to defray the expences of the funeral;

No 55.  
Creditors proceeding to confirm their debtor's testament, his relict craved, that a sum taken out of his repositories, upon receipt by her, and *bona fide* expended on the maintenance of the family, should be omitted out of the inventory. Found that the sum must be confirmed; but that it should be allowed to the relict as *bona fide* expended.