

No. 5. 1743, Jan. 5. ANDREW SPREULL *against* SPREULL CRAWFORD.

THOUGH in this case the defender was found accountable as representing his father as trustee, from circumstances, yet because he did not know the trust, and the Court not unanimous either as to the trust, we sustained his defence of *bona fides* against repetition till the interlocutor finding the trust, but that notwithstanding so far as he was creditor, he must impute in payment of his debts. We gave the like judgment as had been given some years ago in Sir James Cunningham's case, where the conveyance to the trustee bore in general certain sums of money, and no evidence offered that the sum was truly paid,—that an ease is presumed, and that it ought to be rated at a medium of the proved eases of other debts. 17th. February adhered, principally on account of the transaction 1717; *multum renitentibus* President, Drummore, *et me.*

No. 6. 1744, Feb. 24. ANTONIUS LESLY *against* LESLY of Pitcaple.

FOUND that Count Charles is bound to denude.—*Renit.* Strichen, and Arniston, Reporter. *2dly*, Found that he is not bound to denude in favour of Leopold, his eldest son,—unanimously. *4thly*, That he must denude not in favour of Count Antonius his second son, but in favour of Mr Lessly of Pitcaple.—Justice-Clerk, Royston, and Haining were absent; and Kilkerran, Balmerino, and Murkle, were *non liquet*; but all the rest were unanimous. But this was reversed in Parliament, and judgment given in favour of Count Antonius.—18th February 1741.

In the case mentioned *supra*, 18th February 1741, the House of Lords having reversed our decree, and given judgment in favour of Antonius Count Lessly, a question arose about rents uplifted by Pitcaple, in consequence of our decree before it was reversed. The case was, that immediately after our decree, writs of appeal were served in name of Charles Cajuchan, Count Lesly, and Count Leopold, his son, but they neglected to take out a writ in name of Count Antonius, and afterwards for that defect they were allowed to withdraw these writs, whereby nothing was done that Session. Both parties had given factories to Tillifour for uplifting the rents, and he accordingly, after our decree, counted for the rents 1740 to Pitcaple. In December 1741, writs of appeal for all the three were served against Pitcaple, but not against Tillifour, who was no party. In March 1742, Tillifour paid Pitcaple L.110 sterling more of rents, and in April 1742, the decree was reversed, and the Lords sustained Pitcaple's defence of *fructus bona fide consumpti* as to all preceding the appeal in December 1741, but repelled as to after payment, and sustained Tillifour's defence, "lawfully paid." I indeed differed as to the first point, but I was alone. 24th February Adhered as to all that Pitcaple received before the appeal; and 13th February 1745 Adhered as to the whole.—(15th February 1744.)

No. 7. 1751, July 3. CHRISTIAN BEGG *against* MR THOMAS RIGG.

IN 1718, Mr Rigg purchased from Enterkine lands, that had been feued out by the family of Loudon *cum decimis inclusis*. It appears that some stipend had been allocated on them about a century ago, but no evidence that any stipend had been paid but once in 1700; and in 1702 Enterkine obtained decret in absence of repetition against the Minis-