

## SECT. VI.

The possession of the disponee of an heir apparent accounted the possession of the disponent. Effect of a sale at the instance of an heir apparent, as to the creditors.

1758. February 10. WILLIAM YULE *against* ROBERT RITCHIE.

MARGARET MILLER, while she was apparent heir, and before she had been three years in possession, disponed a tenement of land to Ritchie.

Ritchie entered to possession, and continued in it more than three years.

Yule, the heir of Margaret Miller, brought a reduction of this disposition, as granted by an apparent heir not three years in possession.

Ritchie's *defence* was, That his possession must be deemed the possession of Margaret Miller, the disponent, so as to make her, in the eye of law, to have been three years in possession.

*Answered* for Yule; The construction contended for by the defender, is contrary to the reason of introducing the exception from the common law. The exception was introduced merely in respect of the *bona fides* of those who had been tempted to contract with a person whom they saw three years in possession; and whom they therefore had reason to think was duly vested in the subject; but this will never apply to a person contracting with one not three years in possession, even though the contractor himself should remain twenty years in possession after that. His after possession will not give him that *bona fides* which he had not at first; and the rule of law takes place, *Quod initio vitiosum, tractu temporis convalescere non potest.*

In the *next* place, As the exception in question was introduced in the face of the common law, which allows no person not infert to dispone, courts cannot, in a statute correctory of the common law, go beyond the letter of the statute. The statute requires a three years possession by the apparent heir; and a court cannot, in place thereof, substitute a three years possession by the disponee.

' THE LORDS assoilzied from the reduction.'

Act. *J. Dalrymple.*

Alt. *Dav. Rae.*

*J. D.*

*Fol. Dic. v. 3. p. 259. Fac. Col. No 96. p. 172.*

1791. November 15.

GEORGE HALDANE, and Others, *against* CHARLETON PALMER.

In the month of September 1775, a decree of adjudication was obtained by Charleton Palmer against the lands of Grange. And it afterwards became the first effectual one, by a charge against the superior of the lands.

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No 45.

In a reduction of a disposition by an apparent heir not three years in possession, the possession of the disponent for three years was found equivalent.

No 46.

A decree of sale, at the suit of an ap-