

- No 13. THE LORDS found, That the defender might pay according to the instructions in Colonel Horsey's letter, after the legal term, and before the conventional, before interpellation by process.

C. Home, No 16. p 37.

S E C T. II.

Payment to a Person who has lost his Right; to one who is not the true Creditor; to a Creditor denuded. *Bona Fide* Payment must be actual and real Payment.

- No 14. 1610. February 10. BLACKBURN *against* WILSON.

TENANTS who have made payment of their farms mails and duties to their master, being at the horn, before declarator was got of his escheat, will not be compelled to pay over again the said farms and duties of the same years, to the donatar obtaining thereafter declarator of their master's escheat and liferent; but the donatar will have action for these terms only against the rebel's self.

Fol. Dic. v. 1. p. 113. Haddington, MS. No 1795.

- No 15. 1610. February 23. LYON *against* LAW.

INTIMATION of an assignation being made only to a cautioner, the LORDS found, that the principal was in *bona fide* to make payment to the cedent, so as to liberate him and all other cautioners, no intimation being made to him.

Fol. Dic. v. 1. p. 113. Haddington, MS. No. 1971.

*** See This case, *voce* CAUTIONER.

*** It was found in conformity with the above, where intimation was made at the market-cross of the head burgh of the shire, which was no regular intimation; 21st July 1632, Hume against Hume, No 47. p. 848.

- No 16. 1626. March 18. PATERSON *against* EXECUTORS OF PATERSON.

No 16.
Payment being made to one confirmed executor, *qua* nearest

A PURSUIT being moved at the instance of John Paterson, as donatar to the bastardy of umquhile Robert Hunter, and as having right from the King as *ultimus hæres* to umquhile James Hunter, son to the said bastard; which son

died without bairns, and intestate, against the executors of umquhile Thomas Paterson, debtor to the said James Hunter, son to the said bastard, in a special sum of money, for the which they were convened, by a special declarator, to make payment to the donatar: The said Thomas Paterson's executors *alleged*, That they had made payment of the sum and debt libelled, to the said umquhile James Hunter, son to the bastard, his executor confirmed, before the intending of this cause, or granting of that gift to the donatar: Which the LORDS found relevant to liberate the defender at the donatar's hand, seeing the defender had no necessity to inquire or to know the condition of the creditor, if he was the son of a bastard or not, or if the king would have right, as *ultimus hæres*; but that there being a testament confirmed, by the which an executor dative was decerned to the son of the bastard, the debtor was *in bona fide* to pay the debt to the said executor confirmed, notwithstanding that the executor was not nominate by the defunct's self, who died intestate and within the age of pupillarity. And the LORDS sustained the said payment made to the said executors confirmed; albeit it was voluntarily done, and without any sentence recovered against them to that effect, by the said executors, before the payment, as the donatar alleged ought to have preceded before they could have paid; which the LORDS repelled, and found no necessity of a sentence; but that the debtor might lawfully pay to the executor confirmed voluntarily, without any process or sentence. THE LORDS nevertheless reserved to the donatar his action for the said sum against the executor, to whom the payment was made *prout de jure*.

A&G. ———.

Alt. Burnet.

Clerk, Hay.

*Fol. Dic. v. I. p. 113. Durie, p. 193.*1628. January 30. DONATAR of L. CLEGHORN'S Escheat *against* TENANTS.

IN a special declarator by the donatar of L. Cleghorn's liferent, after a general declarator, against the tenants of certain of the rebel's lands, for payment of certain farms of the lands possessed by them, of all years since the rebel was year and day at the horn:—THE LORDS found the payment made by the said tenants, defenders, to the rebel himself, of all years preceding the citation of them, in this special declarator and summons, to be sufficient to liberate them at the hands of the donatar, seeing they were *in bona fide* to pay their farms and duties to their master, to whom they were in use to pay before his rebellion; whose rebellion they might excusably not know before it was intimated by citation to them particularly: And albeit the pursuer *replied*, That this payment could not be admitted for any terms since the decret of general declarator, seeing that sentence put all the lieges *in mala fide* to deal with the rebel, in prejudice of the king and his donatar, seeing all parties having interest were cited thereto: Yet the reply was not sustained, but the payment made after the general declarator was allowed, for all terms preceding the special citation of these

No 16.

of kin to the creditor, the same was sustained, though the creditor was a bastard, and could have no nearest of kin, which the debtor was not bound to know.

No 17.

The debtors of a rebel, whose liferent escheat had been gifted, were found *in bona fide* to pay him before special declarator. A general declarator, which is executed only at market cross, does not put the rebel's debtors *in mala fide*.