

tors within the parish, and not to have pursued a valuation of their own tiends, miskenning that old decreet, seeing *ignorantia juris neminem exculpat*; and ere they diminished the minister's stipend, they should have a fund for supplying what was taken from him; and therefore they repelled his *bona fides*, and found him liable to pay the old stipend aye till he get it lodged upon another. This was so decided *me referente*. Some thought the *bona fides* not interrupted till Mr Reid's citation in his reduction, which was not till October 1705; but in regard the old locality in 1650 was standing, the Lords found *ut supra*.

Fountainball, v. 2. p. 449.

No 25.

1711. January 2. LADY CARDROSS against HAMILTON.

THE deceased Sir William Stewart of Kirkhill, having set a tack of some of his lands of Strabrock to Alexander Hamilton of Brocksburn for three 19 years, the Lady Cardross, his sister, raised a reduction of the said tack on minority and lesion. The tack itself instructed the first part; for it bore to be set with consent of his curators, and there was none of them subscribing. The Lords found the tack *ipso jure* null. But he having *replied* on great meliorations and improvements of the ground, by which the rent was raised, a probation before answer was allowed; but at advising it was contended for the Lady, that no respect could be had to his improvements, (*esto* it were so, as was denied,) neither could they afford any repetition or allowance, because he was *mala fide possessor*, his own tack bearing its dittay *in græmio*, that it wanted the curators consent, and so he could not be ignorant of the nullity and defect of his own right; for *ignorantia juris neminem excusat*, and *scire et scire debere æquiparantur in jure*; and therefore law never affords him action for the expences wared out by him on a subject which he knew he possessed *mala fide*, no more than he who builds on another man's ground *sciens id esse alienum* can crave repetition of his expences; besides, it appears by the probation, that all the meliorations used here was during the first six years of the tack, by digging out whins, dunging, faulding, &c. the benefit whereof he enjoyed by possessing 20 years longer, which did more than compensate his former debursments.—*Answered*, The tack, though relating to curators, yet names none; and *non constat*, that he had any; in which case, not being revoked *intra quadriennium utile*, it was a good and valid tack; and so never put him in *mala fide*. And *esto* it were taken at the worst, *mala fide possessor deducit impensas necessarias et utiles*, and only loses his voluptuary ones; and the law has determined, that a tenant having a long tack, and building on his farm for his better accommodation and convenience, *non præsumitur materiam domino fundi donasse*, l. 55. § 1. *D. locat*. Yet the LORDS found, That Hamilton by his null tack was in *mala fide*, and could have no allowance for his improvements; and if any were due, they were more than compensated and reimbursed by his long lucrative possession posterior thereto.

No 26.

A tenant claiming for meliorations, was found a *mala fide* possessor on a tack by a minor, bearing to be with consent of his curators; as their subscriptions were not admitted.

No 26.

On the 20th July 1711, an appeal being given in against this interlocutor, it was moved that it came too late, being near seven months after the interlocutor; and that the Roman law had prefixed (*decendium*) the space of ten days. But the LORDS admitted the appeal. See TACK. MINOR.

Fol. Dic. v. 1. p. 108. Fountainball, v. 2. p. 618.

S E C T. VII.

Whether a preferable infeftment without interpellation will induce
mala fides.

No 27.

A party poffeffing without interruption by virtue of a posterior infeftment, purfued by a party having a prior infeftment, is safe *quoad præterita* before the interruption, as being *fructus bona fide percepti et consumpti*.

1624. March 9.

MONYPENNY against TENANTS of LUMBENNY.

IN an action purfued by William Monypenny, against the Tenants of Lumbenny, for payment to him of the duties and farms of the lands, fince the date of his infeftment, which was in *anno 1609*, continually unto the date of his fummons, which was in *anno 1622*, by the fpace of 12 years; the defenders were affoizied, becaufe they were infeft in the fame lands in *anno 1609*, for payment of a blench duty allenary to him, who was common author to both the parties; which infeftment, albeit it was after the purfuer's right, yet being clad with continual poffeffion, and never being interrupted by the purfuer fince the date thereof, before the intending of this late purfuit, was found fufficient by the Lords to defend them, and to conftitute them in *bona fide*, to bruik the faid lands all the years preceding the date of this fummons, free of payment of any other duty, except allenary the blench-duty contained in their infeftment, and found this exception relevant to elide the purfuer's action, notwithstanding of his prior right, whereupon no diligence nor interruption was made to the defenders, which might make them fubject to pay any other duty, than that which was inferit in their infeftments.

A&. ———.

Alt. Chaip.

Clerk, Scot.

Fol. Dic. v. 1. p. 109. Durie, p. 118.

1636. January 26.

LADY BORTHWICK against KER.

No 28.

Found in conformity with the above.

THE Lady Borthwick as being infeft by her umquhile husband in her liferent lands, purfues Sir Mark Ker, her brother, for payment to her of the mails and duties of the fame, wherewith he had intronitted, for thefe two years and an half, immediately fubfequent after her husband's deceafe, and preceding the