

SECT. V.

Effect of a Purchaser acquiring a Right preferable to that of his Author; and of Onerous Deeds granted by a *Bona Fide* Possessor.

1741. February 21. DRUMMOND *against* BROWN and MILN.

WHEN a purchaser acquires a preferable right to that of his author, it is *triti juris*, that he cannot thereupon recur upon his author's warrandice, farther than to obtain payment from his author of the price paid by him for the preferable right.

But in this case a new point was determined, viz. That the purchaser of one or more subjects contained in an adjudication, thereafter acquiring a preferable right, cannot thereupon carry off from his author a subject, however separate, contained in the same adjudication, but must communicate to his author, and consequently to any deriving right from him, such separate right, upon his author's reimbursing him of the sum paid for said right.

THE LORDS considered that the purchaser of part of a subject contained in a right, may be thereby let into a discovery of its defects, and that *bona fides* does not allow that he should profit by such discovery, to the prejudice of his author's right to the remaining part of the subject.

Fol. Dic. v. 3. p. 93. Kilkerran, (BONA et MALA FIDES.) No I. p. 95.

1749. February 9.

CHRISTIAN HERON, Relict of Coltrain, *alias* Stewart, *against* AGNES STEWART, and HATHORN her Husband.

JOHN STEWART, writer in Edinburgh, afterwards designed of Phisgill, intermarried, in the year 1668, with the daughter of Thomas Stewart, Provost of Wigton; and, by the contract of marriage, she disposed to him, and the heirs to be procreated of the marriage, the lands of Glenkirk, a small interest she had by her father; and he, on the other hand, became bound to provide her in the life rent of the half, and the heirs of the marriage in fee of all he then had or should acquire during the standing of the marriage; and, on the precept contained in this contract, he was infeft in the lands disposed by the wife.

Notwithstanding which, having purchased the lands of Phisgill, he, in 1703, expedite a charter thereof under the Great Seal in favour of himself and the heirs-male of his body, whom failing, of his own nearest heirs-male, whom failing, of his heirs and assignees whatsoever; and thereon was infeft: And, in the year 1719, he expedite a new charter on his own resignation in favour of himself and

No 23.

The purchaser of part of the subjects, contained in a right, cannot, in *bona fide*, take advantage to the prejudice of his author, of any defect he may discover relative to the remainder.

No 24.

A person, appearing from the records, to be the proprietor of an estate, burdened it in terms of his contract of marriage with a life rent infestment. His right to the estate was reduced, but the life rent infestment remained effectual.