

true Debt; he was allowed to ascribe ~~his~~ Intrusions wholly to the Apprisings medio tempore, till the same were opened, thereby to defend himself as bona fide possessor from counting for his Intrusions in that Interval. 2 Feb. 1711 Guthrie and Williamson contra Gordon. In a Count and Reckoning against a Factor of an Estate, Creditors in Possession thereof by proper Warrants or Tacks at the Commencement of the Faculty, were presumed to continue in Possession during the Faculty; but Creditors by improper Warrants or Judgments of Annuelrent, with an Assignment to Mails and Dutys in gremio till they were paid, having before the Faculty possessed or uplifted the Rents, were not presumed to have continued to possess, but their Intrusions behoved to be proven in Order to ~~exonerate~~ exonerate the Factor from accounting for the same 27 January 1714. Maxwell and her Husband contra Sharp of Hoddam. One having instructed a 90 Years Progress of heritable Rights of Property to a Tenement of Land from his Author in the Year 1620, and Possession since the Year 1600 his Possession was presumed retro to the said Year 1620, unless Possession by another within the Years of Prescription were proved 12 Feb. 1714 Ker of Graichen contra Ingles.

When the Goods of one Person come into another's Hand bona fide or with a good Conscience by Sale or other Title from him who had no Right to them; but was supposed by the Acquirer to be the true Owner, are required back by the Owner from the Purchaser while he hath them; he must make Restitution without getting the Price he paid and recar for that to his Warrantice against the Seller. But if the Purchaser, thinking the Goods his own, hath alienated them before they are questioned, he is free and not obliged to restore, except what more he got for them than he gave, or in so far as he is a Gainer or is in better Condition than if he had not bought them. Because the Obligation to restore arising from the having what is another's in our Possession, ceaseth upon the Thing's going out of our Possession bona fide, without any Profit accruing to us thereby Stat. Lib. 1. Tit. 7. §. 11. A Possessor with a good Conscience while he is ignorant of any better Right to the Thing than his own, *facit fructus perceptos* i.e. a terra remotos et consumptos suos, he enjoys and makes his own the Fruits gathered and spent by him, whether these Profits be natural arising mainly from the Operation of Nature, as Wood Fruit Grass &c. or industrial arising chiefly by humane Labour and Industry as Corn &c. l. 22. C. de reivind. l. 136. ff. de reg. jur. l. 40. ff. de acquir. rer. dom. l. 27. §. 11. ff. de hered. pet. This obtains in Law partly to punish the Negligence of such as timeously do not pursue the Right; partly, because Men spend what they

think their own more liberally, without expecting to be called to Account. And if it were otherwise, our Minds would be constantly upon the Rack, and we could scarcely call Nothing ours, if the cross Event of a doubtful Right, should oblige us to restore what we had bona fide or with a good Conscience gathered and spent.

One is held to possess with a good Title Conscience who hath a colourable Title, tho' labouring under some accidental Infirmities in Law or quarrellable *ex capite inhibitionis* or interdictionis, or for Want of Power in the grantor. Thus a Tack ~~set~~ set by one held and reputed to be Proprietor, tho' he was truly but a Liferenter, not mentioning him to be a Liferenter, was sustained to be a Title of bona fide Possession after the Seller's Death 16 Feb. 1669 Hamilton contra Harper. An Appriser was *litis exceptione bona fidei* from being accountable to other Apprisers within Year and Day, for his Intrusions preceding Citation at their Instance 17 July 1675 Bond contra Justice. Upon the like Ground an Appriser was preferred to bygone Dutys uplifted and spent by him, to an Appriser who had charged the Superior to infect him before the Adjudication 1 Decemb. 1632 L. Kelherron contra Ferguson. A Lady having in her Husband's Lifetime got a Bond from a Person to take Effect in the Event of his Succession to her Husband's Estate, and having after the Husband's Decease transacted the same with the grantor, for a Bond of a less Sum when he was settled in the Estate, of which she uplifted a Part; and the Husband's Executor having been afterwards preferred to hers in a Process for Payment against the Debtor: the Executor of the Husband was found not to have Right to claim from the Lady's Executor Annuelrents for the Sum uplifted from the Date of the Decree of Preference 10 July 1707 Lady Harder and her Husband contra L. Prestongrange. Because it was uplifted by a probable standing Title at the Time. And one having uplifted a Sum bearing Annuelrent, by the colourable Title of an Executor Creditor which was thereafter reduced, was not found liable for Annuelrent 10 January 1673 Ramsey contra Robertson. Discharged ~~to an Heritor~~ to an Heritor of his Tithes by the Minister who was once titular, after he was turned a Sependiary, was sustained for an Exoneration to the Heritor as to the Years paid; and only to make him liable to the Tacksman for other Years conform. to that Use of Payment till Citation or Inhibition 19 January 1669 E. Athol contra Robertson of Strowan. A Procurator Fiscal of a Commissary Court deprived of his Office to which he had Right for Life having got the Sentence of Depriation