

Deprivation reduced at initia, after another put in his place had served therein 3 or 4 Years; the input Procurator Fiscal was not found accountable to him for the interim Profits of the Office during his possession, which ^{profits} found to belong to himself for his Service therein bona fide without Interruption 17 Feb. 1624 Thomson contra Law. But he is not accounted bona fide possessor, whose Title is null in substantialibus or the Essentials as v.g. a Sedin wanting Delivery of the proper Symbol or a Contract of Marriage dissolved within Year and Day 16 Novemb. 1633 Grant contra Grant. This being so obviously and materially void in Law cannot found bona fide possession: nam ignorantia juris non excusat. Nor doth ^{this} Privilege belong to such as possess by a Right contrary to an express Law. Therefore Intromissions with Rents of Lands annexed to the Crown induly alienated, were declared liable to restore Bygones Act. 41. Par. 11. §. 2. An Act of Parliament ratifying a Forfeiture with the Kings gift, was not sustained as titulus coloratus, to afford the Benefit of bona fide possession to the Donatory so as he might lucrari fructus consumptos; the Forfeiture being rescinded by a subsequent Law per modum justitiae et tanquam ab initio 15 Feb. 1706 Laoyes Calowel and Fairly contra Dalziel of Birrus. Not only is bona fide possessor as dominus, not accountable for Profits gathered and spent by him; but also he who possessed by an Infeftment of Relief, whereby the Rents were imputable in Satisfaction 10 Feb. 1676 Sorimzeour contra E. Northesk.

This Privilege of bona fide possession was sustained against a Minor residing upon Minority and Lesion 16 Feb. 1666 E. Wintoun contra C. of Wintoun and against a Donatory of Forfeiture 28 January 1679 L. Blair contra L. Maxlehead. A Defence of bona fide possession upon Infeftment granted by one after he was Year and Day at the Horn, was sustained against the Donatory of the life rent Escheat to free from all Bygones commencing any Declarator 3 July 1624 Muir contra Achany and E. Gallaway. One having Right to a Vassal's Ward, was in a Prohibit of Mails and Dutys at his Instance, excluded by a Fack or Faw of his Ward-Lands not confirmed by the Superior, from seeking for all Years preceeding the Citation, any greater Duty, than that contained in the Fack or Faw Infeftment 13 March 1627 L. Ley contra Bos.

The sole taking and ingathering of Fruits doth not intitle the bona fide possessor to keep them if not spent for he must restore all that are extant l. 4. §. 2. ff. fin. reg. l. 22. C. de rei vind. whether natural or industrial

Ludwell

Ludwell Comm. ad §. 35. Inst. de rer. div. But the Lord Stair (Inst. lib. 1. Tit. 7. §. 10) is of Opinion that industrial Profits after Ingate-thering fall not under Restitution. Bona fides was not extended to secure to the possessor any bygone Fruits that had not been uplifted from the Tenants, tho he had gotten Bond for them, the Money being still unpaid 24 Feb. 1601 Lefly contra Minister of Glenmuick. But the Law requires both Uplifting and Consumption of Fruits which may be extant after uplifting, as Stacks of Corn: yet in liquidants consisting of Money, Consumption is presumed from the uplifting, seeing none can be obliged to instruct how they expended such uplifted Rents 23 January 1679 L. Blair contra Lady Maxlehead. A bona fide possessor's being complector by the Profits spent, v.g. by paying Debt with them or giving them to such as he would have given to, for these had not come to his Hand doth not subject him to answer for them 10 Voet Comm. ad Tit. ff. de acquir. rer. dom. n. 29 Myden Compend. ad Tit. ff. de rei vind. n. 26 Stair lib. 1. Because the Law says, that de consumptis agi non potest §. 35 Inst. de rer. div. And that fructus consumptos lucratur l. 4. §. 2. ff. fin. reg. which the possessor could not do if liable so far as he is profited. The Brocard bona fide possessor facit fructus perceptos &c. takes no place as to Sums of Money, but only as to Fruits of Lands upon a colourable real Right 19 Decem. 1607 Cleland contra Rome. Where one and his Authors had possessed Land by Virtue of an adjudication, after the legal Redhibition of 10 Years, and the adjudication came afterwards to be rescinded to a Security, and the Legal kept open upon this Ground, that more was adjudged for than was due; their Intromissions medio tempore were imputed to extinguish the adjudication. Albeit it was pleaded that their possession being after expiring of the legal, while they had Reason to look upon themselves as absolute domini or unaccountable Proprietors; it were hard to subject them to account for Fruits bona fide perceptis & consumptis. In Respect it was answered, that bona fides doth indeed free the possessor from accounting for his Intromissions in Order to restore them, but doth not hinder such Intromissions to be ascribed to extinguish the Title of his possession. January 1720 Walker contra M'pherson and Forrester.

From what hath been said concerning the Effect of bona fide possession

possession