

No 28.

ced against the Lord Borthwick, her husband and author, for not payment of a sum contained in a bond given to the excipient by the said Lord Borthwick; to the which bond the Lady had consented; and albeit the said bond, comprising and infestment, be all posterior to the lady's infestment, whereupon she now pursues; in respect whereof the pursuer alleged, that the exception ought to be repelled: Likeas she *alleged*, The bond alleged subscribed by her, to be null in law, done by her *stante matrimonio*, and so not obligatory: Yet the defender *alleged*, That by virtue of that his public right, he having become in possession of the lands in her Lord's lifetime, and keeping and continuing that possession also after his decease, during the whole years and terms acclaimed, before the intending of this cause, without any interruption thereanent made to him by the lady, he ought not to restore the fruits thereof, which were *bona fide* received by him, by virtue of the said title, and are now consumed.—THE LORDS found this exception relevant, to liberate the defender from these years by-past before his citation, in respect of his public infestment, standing clothed with possession for these duties, *qui sunt fructus bona fide percepti et consumpti*, aye to the time foresaid of the interruption by the said summons, notwithstanding of the anteriority of the pursuer's right. And it being further *replied*, That the defender's infestment and possession alleged, cannot make him *bonæ fidei possessor*, because the same is reduced *ab initio*, at the instance of \_\_\_\_\_, creditor to the Lord Borthwick, by reason of an inhibition executed against the said Lord Borthwick, before the giving of the bond to Sir Mark, which is the ground of his comprising and infestment: Which infestment, albeit it may appear that it may convalesce whensoever the prior creditor reducer shall be paid off the sums in his inhibition; yet while the same be paid, the infestment remains and is null, and cannot be maintained as a lawful title to the defender whereby to bruik.—THE LORDS found the exception relevant, notwithstanding of this reply; for they found, that the reduction at a prior creditor's instance, upon this preceding inhibition, could not hinder the defender, but that he might lawfully use his infestment against any other person, specially to defend his possession for the by-gone duties foresaids against others, who could pretend no right nor interest to that inhibition. See UNION.—INHIBITION.

Act. Nicolson &amp; Dunlop.

Adv. Advocatus &amp; Hay.

Clerk, Hay.

Fol. Dic. v. 1. p. 109. Durie, p. 790.

No 29.

1664. July 19.

DOUGLAS against L. of WEDDERBURN.

*Bona fides* was found to defend a tackfman of teinds from bygones, though the fetter's right was reduced in Parliament.

Fol. Dic. v. 1. p. 110. Stair, v. 1. p. 217.

\*\*\* See The particulars voce JUS SUPERVENIENS, &amp;c.