

1676. February 8. SCRIMZEOUR against The EARL of NORTHESK.

GUTHRIE of Achmethie granted disposition to the Earl of Northesk of his lands of Achmethie, which by a back-bond was qualified to be for payment and relief of sums due to the Earl: But before infestment, umquhile Major Scrimzeour apprised the lands from Guthrie, and was thereupon infest, and obtained decret of mails and duties against the tenants; and being killed at Dunbar, the Earl of Northesk entered to possession, and obtained payment of the mails and duties from the tenants, without process of law. Margaret Scrimzeour being infest as heir to her father, did obtain reduction of the Earl's right, as being posterior to her father's right, and pursued the Earl for compt and reckoning of his intromissions, who *alleged* absolvitor for all years preceding the decret of reduction; because he enjoyed the rents as *bona fide* possessor, by virtue of his infestment of relief.—The pursuer *answered*, *imo*, That a *bona fide* possessor is only secure when he possesses as *dominus*, who may freely spend what he hath; but this infestment being for relief, and comptable, was in place of a stock, and cannot be presumed to be spent as rent. *2do*, *Bona fides* cannot be pretended, where the possession is vitious, *vi, clam, aut precario*; but the Earl's possession was vitious, interverting Scrimzeour's possession, who had obtained decreets against the tenants; and so was clandestine.—The defender *replied*, That he was not obliged to know Scrimzeour's right or possession; but being infest by the common author, he might warrantably demand the duties from the tenants; and if they voluntarily paid him, he might lawfully take up the same, and continue his possession till his *bona fides* should be interrupted, or his right reduced.

Which the LORDS sustained; and found that he might employ the rents uplifted before the decret of reduction; being comptable for the superplus.

*Stair, v. 2. p. 412.*

1676. December 14. The EARL of ARGYLE against The LORD MACDONALD.

THE Earl of Argyle having pursued the Lord Macdonald, for reduction of a feu holden of the pursuer *ob non solutum canonem*; it was *alleged*, That the defender had a disposition of the superiority from Locheal, before my Lord Argyle's right, by a disposition likewise from him: And though my Lord Argyle having completed his right before the pursuer, by an infestment upon the same, will have right to the feu-duties after his infestment; yet the defender had right to the bygones by the foresaid disposition made to him; which, being of the lands, and superiority, and made to the vassal himself, was, upon the matter, an assignation to the feu-duties, and a discharge. And farther, That, as to the feu-duties after my Lord Argyle's right, he was *in bona fide* not to pay the same, having the foresaid disposition as said is: And my Lord Argyle having

No 30.

An infestment of relief was reduced, on account of a prior apprising; but the defender's possession was held to be *bona fide* until the decree of reduction.

No 31.

In the reduction of a feu *ob non solutum canonem*; found the defender was *in bona fide* not to pay; having the first disposition of the superiority from the common author, though the pursuer was first infest; the