

1714. *November 19.*SOPHIA and MARY SHEARERS *against* GEORGE FLEMING and JANET KER his Spouse.

No 4.

In a competition betwixt real prior creditors of a defunct, and the second husband of a relict, liferentrix of houses, who was in possession, and who had adjudged for expenses of repairs allowed to him by a decree of the Dean of Guild, it was found, that his intromissions must be imputed in the first place in satisfaction of the decree, and adjudication following upon it.

JAMES HODGE having granted heritable securities upon some houses in Edinburgh, to some of his creditors, to which his wife expressly consented; after his decease, George Fleming marries the said relict and liferentrix, and enters to possession by virtue of her liferent-infestment; and, further, having applied to the Dean of Guild for a visit, he obtains from him a report, that the houses were become ruinous; and, in consequence thereof, a warrant to repair; and, after reparation, a decret of the Dean of Guild court for the expenses, whereupon he adjudges. Thereafter the pursuers, Shearers, raise a process of mails and duties against him, and the other possessors.

Alleged for Fleming, *imo*, That he having entered to the possession by virtue of his wife's liferent-infestment, was *bonæ fidei possessor, qui facit fructus perceptos et consumptos irrevocabiliter suos*.

Answered for the pursuers, That his wife having consented to their right, they were preferable to him.

Replied, That however the pursuers might be preferred to the rents in time coming, yet absolvitor from bygones, in respect of the wife's liferent-infestment, and his *bona fides*, which could not be interrupted before production of the pursuer's infestment, to which the wife is a consenter. *2do, Et separatim*, he ought to be preferred in time coming, by virtue of the Dean of Guild's decret and adjudication thereon; because the subject was preserved by the foresaid reparations.

Duplied, That he knowing the reparations were a privileged debt, to which all creditors must yield, was in *pessima fide* to impute his intromissions to the liferent infestment in the first place.

THE LORDS found, that Mr Fleming's intromissions are imputable in satisfaction and payment of the sums due for reparations contained in the Dean of Guild's decret, and adjudication following thereon.

Act. Spottiswood.

Alts Fleming.

Clerk, Gibson.

*Fol. Dic. v. I. p. 459. Bruce, v. I. No 7. p. 11.*1741. *July 23.*EARL of ABERDEEN *against* The CREDITORS of SCOT, and their Trustees.

No 5.

WHERE a creditor having led an adjudication of his debtor's estate, upon his bond containing annuairnt and penalty, had thereafter used arrestment upon the bond, and in a furthcoming drawn a certain sum, but which did not exceed