

BONA FIDE CONSUMPTION.

S E C T. I.

Bona Fide Possession of Teinds.

1731. *June 25.*STIRLING of Herbertshire *against* FEUARS of Denny.

IN a pursuit against feuars, at the titular's instance, for the teinds of their lands intromitted with by them; the defence *pleaded* for by-gones was, That they had been in use, past memory of man, to pay a certain duty, in name of teind, to the minister of the parish, presumed to have had a title, since no other titular appeared; and therefore *quoad* the residue they were *bona fide* possessors. — *Answered*, Ministers have a right to maintainance out of the teinds, but cannot be presumed to be titulars, especially since the act 1690, giving to the patron the same share of teind, that then remained with the clergy; and the receipts of teind-duty taken from the minister by the heritors, destroy this presumption, bearing 'teinds payable to him out of the lands;' so that the receipts do not so much as insinuate, that the minister was titular, or had a power to discharge the whole teinds. Found, that the sums paid to the minister do not exoner the heritors from paying the remainder of their teinds to the titular, and found them liable for 40 years preceding the citation.

This decision was reversed by the HOUSE of LORDS, and payment to the minister for 40 years, was sustained as *bona fide* payment *quoad* the whole teinds; which seems to be reasonable, for the heritor must uplift the teind, to save it from perishing in the tenants hands; and it would be hard to oblige him to be another man's factor without a salary.

In this case it was likewise found, That an heritor possessing his own teinds by virtue of a tack from another, as tackfman, is a *bona fide* possessor until interpellated by the real titular.

Fol. Dic. v. I. p. 110.

See The particulars *voce* TEINDS.

1748. *November 8.* SMITH of Methven *against* OLIPHANT of Bachilton.

DAVID SMITH of Methven, and Katharine Cochran his mother, titulars of the provostry of Methven, pursued David Oliphant of Bachilton, for the teinds of his lands due within the years of prescription, as lying within the provostry: To which it was *answered*, That Bachilton had paid during these years a certain

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No 1.

An heritor possessing his own teinds, by virtue of a tack from another as tackfman, found to be *bona fide* possessor, until interpellated by the regular titular. Payment to the minister for 40 years, without challenge from the titular, found to exoner the heritor of all by-gones.

No 2.

Where the heritor knew the minister to be stipendiary, payment to him of the teinds