

THE LORDS found, That the payments made by the defender to Murray by Lind's order, were made *bona fide*; and that the same is relevant to assoilzie, unless the pursuers offer to prove, by the defender's oath, that he promised to pay them, or that Lind ordered the defender to pay them, and that he acquiesced.

No 28.

Act. Robert Craigie.

Alt. Walter Stewart.

Clerk, Robertson.

Bruce, No 26. p. 34.

1729. January.

LORD HALKERTON against DRUMMOND.

THE purchaser of an estate, upon which there was an infeftment of annual-rent, having made payment of the same to an heir who had only a general service, and had not established the infeftment in his person; this was not found to be *bona fide* payment, because he might have seen the infeftment in the register, and ought to have known the defect of the creditor's title.

No 29.

Fol. Dic. v. I. p. 113.

* * * See This case, voce SERVICE of HEIRS.

1758. December 2.

ROBERT HOWES, and ALEXANDER CUNNYNGHAME his Trustee, against JAMES GOODLET-CAMPBELL of Auchline and Abbotshaugh.

JOHN MELROSE had three children, William, Agnes, and Catharine.—Catharine was married and had issue.

Agnes Melrose married James Goodlet of Abbotshaugh, and had issue, James, John, Alexander, and Agnes.—James and John died without issue.—Alexander went to America about the year 1702, where he was supposed to have died childless, but had issue a daughter, married to Job Howes, the father of Robert Howes.

Agnes Goodlet married Robert Campbell of Auchline, and had issue Duncan Campbell, the father of James Goodlet-Campbell.

In April 1719, William Melrose, then residing in London, obtained from James Goodlet, the husband of Agnes Melrose, an heritable bond for L. 710 Sterling, for money advanced, upon which he was infeft.

In April 1739, he made a will after the English form, and died soon after. By that will, besides other legacies, he bequeathed L. 50 to his neice Agnes, the wife of Robert Campbell, and L. 500 to her younger children; also L. 500 to the descendents of his sister Catharine.—He made no mention of the heritable bond in his will; and it is uncertain whether he knew, that, by the law of Scot-

No 30.

Payment made by the debtor's administrator, to one who is not the true creditor, does not afford the defence of *bona fides* to the debtor.