

No 26.

On the 20th July 1711, an appeal being given in against this interlocutor, it was moved that it came too late, being near seven months after the interlocutor; and that the Roman law had prefixed (*decendium*) the space of ten days. But the LORDS admitted the appeal. See TACK. MINOR.

*Fol. Dic. v. 1. p. 108. Fountainball, v. 2. p. 618.*

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S E C T. VII.

Whether a preferable infeftment without interpellation will induce  
*mala fides.*

No 27.

A party poffeffing without interruption by virtue of a posterior infeftment, purfued by a party having a prior infeftment, is safe *quoad præterita* before the interruption, as being *fructus bona fide percepti et consumpti*.

1624. March 9.

MONYPENNY against TENANTS of LUMBENNY.

IN an action purfued by William Monypenny, against the Tenants of Lumbenny, for payment to him of the duties and farms of the lands, fince the date of his infeftment, which was in *anno 1609*, continually unto the date of his fummons, which was in *anno 1622*, by the fpace of 12 years; the defenders were affoizied, becaufe they were infeft in the fame lands in *anno 1609*, for payment of a blench duty allenary to him, who was common author to both the parties; which infeftment, albeit it was after the purfuer's right, yet being clad with continual poffeffion, and never being interrupted by the purfuer fince the date thereof, before the intending of this late purfuit, was found fufficient by the Lords to defend them, and to conftitute them in *bona fide*, to bruik the faid lands all the years preceding the date of this fummons, free of payment of any other duty, except allenary the blench-duty contained in their infeftment, and found this exception relevant to elide the purfuer's action, notwithstanding of his prior right, whereupon no diligence nor interruption was made to the defenders, which might make them fubject to pay any other duty, than that which was inferit in their infeftments.

A&amp;. ———.

Alt. Chaip.

Clerk, Scot.

*Fol. Dic. v. 1. p. 109. Durie, p. 118.*

1636. January 26.

LADY BORTHWICK against KER.

No 28.  
Found in conformity with the above.

THE Lady Borthwick as being infeft by her umquhile husband in her liferent lands, purfues Sir Mark Ker, her brother, for payment to her of the mails and duties of the fame, wherewith he had intronitted, for thefe two years and an half, immediately fubfequent after her husband's deceafe, and preceding the