

informalities, and the legal laid open. The adjudger was not considered to have consumed *bona fide* the previous rents, but was found liable to account, in order to extinguish the grounds of debt.

Fol. Dic. v. 1. p. 107. Session Papers in Advocates' Library.

No 53.

1732. February.

BALFOUR *against* WILKINSON.

THE legal of an adjudication was expired many years before, in a reduction, it was laid open.

It was found, that the adjudger was liable to account for his intromission prior to the decree opening the legal, in order to extinguish the debt; but not to the extent of repetition. The plea of *bona fide* consumption was attempted, but repelled.

Fol. Dic. v. 1. p. 107. Session Papers in Advocates' Library.

No 54.

1746. December 18.

LADY BALMERINO *against* THE CREDITORS.

THE Creditors of James Lord Balmerino being about to confirm his testament, application was made to the Commissaries by his relict, that there should be omitted out of the inventory a sum of L. 97: 5s. Sterling taken out of his repositories, and delivered to her upon receipt, to be accountable therefor, and *bona fide* expended by her in the maintenance of the family, from 5th January when my Lord died, till the next term, as by judgment of the Court of Session was allowed to the relict of Mr Hugh Murray Kynnymound, who had also expended a sum lying by him, in the maintenance of the family.

The Commissaries refused this demand, and she presented a bill of advocatation; to which it was *answered*, That the cases were not similar; for that in the one the money was in possession of Mrs Murray, before her husband's decease, and might be by her applied *bona fide*, equally with any provisions laid in for the family; but in this it was taken out of the defunct's repositories on receipt, to be accountable; so that there could be no *bona fides*; and if this claim were allowed, it would have the effect of making the maintenance of the family a preferable debt.

N. B. The interlocutor in Mrs Murray's case ' found the aliment to the family to be a debt, though not a preferable debt upon the executry; but found, that money in Mrs Murray's hands, being *bona fide* applied to the maintenance of the family to the next term after Mr Murray's decease, she could not be bound to repeat the same. See HUSBAND and WIFE.

Some of the Court *observed*, That by the act of sederunt 25th February 1692, money ought only to be taken out to defray the expences of the funeral;

No 55.
Creditors proceeding to confirm their debtor's testament, his relict craved, that a sum taken out of his repositories, upon receipt by her, and *bona fide* expended on the maintenance of the family, should be omitted out of the inventory. Found that the sum must be confirmed; but that it should be allowed to the relict as *bona fide* expended.

No 55.

and if the receipt had been taken in these terms, it would have destroyed the *bona fides*; so that if receipts were right taken afterwards, any determination in this case would not affect the interest of the creditors.

She likewise applied, That whereas my Lord's whole moveables were sold, part whereof she had bought, and given security for; and there was afterwards found a writing, whereby he disposed to her all the China, whether for the table or tea-table, as also some particulars of silver plate, pictures and jewels; therefore craving to have these things struck out of the inventory, and the security given by her for the price delivered up, as they belonged to herself; and that in so far as she had paid ready money for them, she might be allowed to retain out of the other effects bought by her; which demand was also refused, and the refusal complained of in the advocacy.

Answered, That as this was a legacy in favour of my Lady, the creditors were preferable.

THE LORDS remitted, with instructions to this purpose, that the sum taken out of my Lord's repositories should be confirmed; but that it should be allowed to the executor as *bona fide* expended by my Lady for the maintenance of the family; and that the creditors should be found preferable on the subjects legated, which ought to be confirmed; but that they behoved to assign their debts to my Lady, to the extent of the value; to the end that she might thereon affect the estate; but so as she should not compete with them. *See EXECUTOR.*

Pet. *J. Graham.*Resp. *Ferguson.**Fol. Dic. v. 3. p. 96. D. Falconer, v. 2. No. 148. p. 186.*

1750. July 18.

The TOWN OF PERTH against The LORD GRAY.

No 56.
A person whose right to fishing was found to be excluded, found to have possessed *bona fide*, and not to be liable for damages.

THE LORDS having, 9th January last, in the cause betwixt the Town of Perth and the Lord and Lady Gray, *voce* PROPERTY, found, That the Town had the only exclusive right of fishing upon the lead and channel of the river, interjected betwixt the island of Sleepless, and the opposite north bank of the said river; the Town insisted for damages occasioned by the Lord Gray's fishing, condescending on a sum retained by their tacksmen on that account; and for the rent received by the Lord Gray, during the time his tacksmen fished.

THE LORD ORDINARY, 10th February, 'sustained the defence, that the defenders possessed *bona fide*, and found them not liable for the damages alleged; 'sustained by the pursuers, nor to account for the rents of the fishing received by them, the defenders, during their possession.'

On bill and answers, the Lords adhered.

Aft. *R. Craigie.*Alt. *W. Grant.**D. Falconer, v. 2. No. 149. p. 174.*