

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.

No 53.

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

1732. February.

BALFOUR *against* WILKINSON.

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

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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.*

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.