

*Answered, imo,* The Lords do not go back upon modifications. *2do,* The bygone years aliment are *fructus bona fide consumpti*.

*Replied:* The *quota* of the modification proceeded upon misrepresentation, and the *fructus* cannot be thought *bona fide precepti et consumpti*, seeing the defender had the aliment only by retention and absolution from the process of implement.

THE LORDS would not go back to restrict the aliment, and assolvied from the reduction.

*Harcarse, (ALIMENT.) No 20. p. 5.*

1686. *March.* LADY ECCLES *against* MR JAMES DOUGLAS of Earnslaw.

IN a special declarator at a donatar's instance against the rebel's relict, it was *alleged* for the defender, That she consumed and disposed of some part of the goods acclaimed, for the defunct's funeral expences, her mournings, and the maintenance of the family till a term.

*Answered* for the pursuer: That the goods of the defunct, who died rebel, fell to the fisk, and could not be liable to any such expence.

*Replied:* The goods were so employed before the gift of declarator, and the defender was *in bona fide* to do so, not knowing of the rebellion. *2do,* A legal third of her husband's goods belonged to herself.

THE LORDS sustained the relict's *bona fides*; but found, That the rebellion excluded legal thirds; and it was not alleged that she had any obligation for her third. *See ESCHEAT.*

*Fol. Dic. v. I. p. 110. Harcarse, (ESCHEATS.) No 437. p. 117.*

1698. *November 29.*

JAMES FINDLAY of Balchristie *against* JAMES MONRO.

WHITELAW reported James Findlay of Balchristie against James Monro, writer in Edinburgh. Mr Findlay having sent an ox to be delivered to John Macfarlane, writer to the signet; and the man employed, forgetting his name, and asking for a north-country writer, he was directed to James Monro's house by some neighbours, and he not being in town, his wife received it, and disposed on it, not knowing but it was sent by her husband, or some friend in a gift; but, when he came home, he declared he knew not whence it came; however, they salted and applied it to the use of his family; and being now pursued for L. 48 Scots, as the price of it, he *alleges*, it was *bona fide perceptum et consumptum*; if he had sold it, he would have been liable as *locupletior factus*; but he did not, except the skin, for which he got L. 3 Scots; and he had little benefit, seeing a

No 47.

No 48.

A relict's intromission with a defunct's goods, applied before his escheat was gifted, held to be *bona fide*.

No 49.

A present sent by mistake to one person instead of another, was not considered to be *bona fide* consumed, being *sine causa*.