

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.*