

cause the lady, who might pretend the right, never being served nor kened, would not have had right in her own time to pursue thereof herself, and far less her executors could do the same, seeing there is required a brief out of the Chancellery, and a kening by the Sheriff for her title; but here there is no necessity of a title, but only that he was husband, and for the husband's cessation he was all that space out of the country. THE LORDS found the allegiance relevant, notwithstanding of this reply; for they found, that this courtesy being a benefit competent to the husband, who sought not the same, conform to the law and consuetude of this realm, therefore his executors could not seek the same, especially after so long a time, where the mails of the house libelled were uplifted and spent, by virtue of an heritable title, never interrupted within the space of the years acclaimed, and therefore affoizied.

Act. Stuart &amp; Sandilands.

Alt. Nicolson & M<sup>c</sup>Gill.

Clerk, Gibson.

Fol. Dic. v. I. p. 108. Durie, p. 788.

\* \* \* See This case by Spottiswood *voce* COURTESY.

1637. March 21.

LADY MANDERSTOUN *against* L. RENTOUN.

LADY MANDERSTOUN being provided by her husband in her contract of marriage, to her liferent of some teinds, whereof the right was in her husband's person for long spaces to run, and being lawfully divorced from him, she pursues the Laird of Rentoun for payment of the duties of the said teinds, of all years since her divorcement, viz. by the space of three or four years by-past, whereto she acclaimed right, as if her husband were naturally dead: And Rentoun *alleging*, That he had lawfully comprised her husband's right of these teinds, albeit after the contract of marriage, yet before the divorcement, in respect whereof he bruiking by virtue of his public right, *bona fide fecit fructus perceptos et consumptos suos*:—THE LORDS found this allegiance relevant, to import liberation to him from these bygone years acclaimed, notwithstanding that the pursuer's right was by virtue of a preceding contract of marriage.

Act. Stuart.

Alt. Nicolson &amp; Craig.

Clerk, Scot.

Fol. Dic. v. I. p. 108. Durie, p. 840.

1685. November 27.

HEIR of Kirkland *against* His MOTHER.

FOUND, that an heir pursuing a process of aliment against his mother liferentrix, will get nothing modified for the years preceding the summons, the defender having *bona fide* consumed her whole annuity, these years; and the life-

No 20.

No 21.

A lady was provided by her contract of marriage to the liferent of teinds. Having divorced her husband, she claimed from a creditor who possessed by apprising. As to bygone he was found in *bona fide*.

No 22.

No 22. rented lands not being ward lands, which by act of Parliament are burdened with the heir's aliment, but land feu or blench, to which the act is extended by practice only.

*Fol. Dic. v. 1. p. 108.*

\* \* \* See The particulars *voce* ALIMENT, p. 403.

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SECT. VI.

Possession upon a Right null *ex facie*.

1629. June 26. K. ADVOCATE *against* SOME EXCOMMUNICANTS.

No 23.  
Persons excommunicated possessed lands, &c. for long after the excommunication. In a process at the instance of the King's Advocate for the value of the fruits, they were allowed deduction of actual outlay, but nothing for the maintenance of themselves and families.

SEVERAL persons excommunicate, being pursued upon the act of Parliament 1609 for payment of certain corns growing upon the mains possess by themselves, of diverse years after the sentence of excommunication, and now by-past, before the intenting of this pursuit; and the defenders *alleging*, that the pursuit being for the growth of corns of by-past crops, which were consumed, and not now extant, the same ought not to be sustained; for reason could not enforce, that they should be decerned to pay that which was *bona fide* spent diverse years since, being corns which could not be kept. Likeas the same being spent in servants fees, and others, who laboured the ground; and in the maintenance of themselves and their families, which rested out over the seed, and teind, which also ought to be deducted, therefore the same being so spent for maintaining of their lives, and for their entertainment, it ought to be allowed, as both *bona fide* consumed, and necessarily done, and therefore ought not to be repeated, nor they subject to pay the same. THE LORDS found, that the seed, and teind, and servants fees, and other expences made in labouring of the ground, and mains, and winning of the corns growing thereon, ought to be deducted off the corns foresaid, growing the years libelled, for which the defenders were convened, the same being made special; but as for that part of the allegiance, anent the corns spent upon their own entertainment, being, as they alleged, the only means whereby they lived, and so necessarily alleged to be consumed: THE LORDS repelled that part of the allegiance, and would not allow the same; but sustained the action for the corns foresaid, growing, and intromitted with by the defenders, as said is, except only for teind, seed, and servants-fees, and expences of the labouring and winning thereof, for which defalcation was made, and no further; for it was found, that the action was all good for the by-gones, since the excommunication, which took away *bona fides*. albeit they were consumed, as it is for time coming, so long as they stand excommunicate; for that same necessity