1696. *January* 8. BEATRIX and MARY FLETCHERS *against* FLETCHER.

BEATRIX and Mary Fletchers, daughters to Sir A. Fletcher of Aberlady, gave in a petition against their nephew, representing they had a decreet against his father for 200 merks of yearly aliment to each of them out of the estate in 1679, and in time coming; and he being heir served and retoured to him, craved he might be decerned to pay it, as was done formerly. ANSWERED, 1*mo*. This ought to be done by a process *via ordinaria*, and not summarily on a bill. 2*do*. When that decreet was obtained, it was sisters against their brother. 3*tio*. They were then minors, and now they are majors. 4*to*. The estate was then in better condition than now, by supervenient burdens. REPLIED,----Aliments might be continued without processes, and their favour pleaded to receive it summarily.

The Lords found this case might be taken in by way of bill; but, as to the other defences, they found a nephew was not bound to aliment his aunts, who were now long past their minority, (though it was alleged they were infirm gentlewomen, and unfit for service;) especially seeing, by the condescendence given in of the rental of the estate, and debts affecting the same, it appears not to be very able to bear any farther burden; and if nephews might be obliged to aliment, why not cousins-german, and as far as consanguinity reaches. And, as for the time it ought to last, the Lords, in 1691, would not modify to Jacobina Inglis, a posthumous child of Cramond, longer than to the 12th year of her age; though I find, in a decision recorded by Stair, 10*th November* 1671, *Hasty*, the Lords continued the aliment during minority, at least till he got a calling, or other means to aliment himself. *Vol. I. Page* 697.

1696. *January* 9. HOPPRINGLE of TORSONCE *against* JAMES BORTHWICK of STOW.

THE Lords advised the debate between Hoppringle of Torsonce and Mr James Borthwick of Stow, anent the privilege of building a mill, which Torsonce impeded, alleging the haill lands within the barony were thirled and astricted to his mill; and Stow had raised a declarator of exemption and immunity. The lands held of the Archbishopric of St Andrews, and neither of the parties produced a clear progress:—Torsonce's first right being in 1543, from Ker of Cesford, who was the Bishop's immediate vassal, disponing the mill *cum astrictis multuris*: Stow's right was prior some months, being a seasine and charter of confirmation, bearing, in the *tenendas*, *Cum molendinis et multuris*; but the charter confirmed was not produced: so that the Lords found that Torsonce's old charter founded a presumption of a constituted thirlage; and that Stow's charter of confirmation did not supply the want of the charter confirmed, though it was an adminicle thereof; but thought that presumed thirlage might be taken off by more pregnant and stronger presumptions; and allowed them to be farther heard on the nullity of Torsonce's right for not confirmation, neither by the Pope nor King, conform to the Acts of Parliament in 1584, &c. and anent the prescription. Upon a new hearing, the parties enlarged on many grounds,—the one to infer an astriction, and the other to enforce immunity and freedom; out of