No 113. quisite *inter majores*, yet here she entered when minor, and continued long after the same. The Lords allowed aliment during all the years of her abode in his family, in respect it was begun in her minority, and she remained therein till she was 40 years old, but they modified the aliment for her and her husband to 250 merks *per annum*, though she had L. 10,000 Scots of portion.

Fountainhall, MS.

No 114.
A woman who had a small jointure, entertained her son, paid his prentice-fee and funeral expenses. In a suit at her assignee's instance against her son's heir, who was also his cousin, the Lords found that the presumption of entertaining *gratis* ceased here.

1697. *November* 17. Alison Gourlay *against* James Urquhart.

A mother entertains her son for several years, pays his prentice-fee, and when he dies minor she is at the whole expense of the funerals; and assigning her grounds of debt, the assignee pursues the next heir, for constituting these debts, to affect the heritage he might succeed to as heir to his cousin. It was *alleged*, Your cedent can never claim these as debts, seeing it is presumed that she alimented *ex pietate materna*, especially seeing she liferented her son's whole stock, and so *jure naturæ* was bound to maintain her own son. *Answered*, Where a mother has such a competent liferent as may maintain both herself and her children, there it may be rationally presumed, that she does it *gratis*, and by the natural obligation lying upon her to maintain and educate; but if it be such as can hardly maintain herself, as here all she possessed was allenarly four acres of land, paying L. 5 Sterling yearly, the presumption that she did it *ex pietate* ceases, and what she expended must affect the fee of the acres. It is true, there is a decision, 17th November 1680, Sandilands *contra* Telfer, *voce* Tutor and Pupil, where it was found, that a tutor could acclaim no more from his pupil but the annualrent of his stock, and they might not break on the fee; yet there it was not so strait a liferent but it might soberly aliment them both; which was impossible in this case. The Lords found the presumption of entertaining *gratis* ceased here. Yet if it had been betwixt the son and mother, there might have been more debate; but he who now fell into the fee of the acres, on her son's death, being a stranger to her, the Lords thought it hard to construct what she had furnished to her son as donation *quoad* him; seeing whatever she might have quit to her son, it is not to be presumed she intended also to gratify thereby his remoter heirs.

Fol. Dic. v. 2. p. 142. Fountainhall, v. 1. p. 795.

No 115.

1731. *February.* Creditors of Kimmerghame *against* Hume.

A Creditor in an heritable bond of L. 8000 Scots assigned the same to his debtor's daughter *in familia* with her father, the father having died bankrupt. In a competition between the young Lady and the personal creditors of the de-