

exception without an express clause disposing, yet being a particular subject, (household plenishing) it would have implied a disposition, and had the same effect.—18th Nov.

No. 7. 1738, Dec. 8. SWINTON of Strathore *against* MRS SWINTON.

STRATHORE, Clerk of Canongate, sold his office to Ninian Cunningham for a bond of annuity of 500 merks during life in way of aliment, and not to be arrestable by creditors. Strathore had granted his daughter-in-law a bond of 200 merks *per annum* for alimentering her children, his grandchildren. She arrested in Mr Cunningham's hands,—and in the forthcoming before the Sheriff, Strathore alleged that it was not arrestable, being alimentary, and come in place of an office whereof the profits were not arrestable. *2do*, He had *beneficium competentia*. The Sheriff sustained the defence, and upon an advocacy by the pursuer, the Lords, *me referente*, found the annuity not arrestable,—and what moved them was, that the profits of the clerkship sold were not arrestable; and though if the annuity had been more than a necessary aliment, they thought the surplus would have been affectable by creditors, as they awarded in the case of their own Macers, yet this was no more than a reasonable aliment for the defender's own family.

No. 8. 1738, Dec. 19. CREDITORS of DOUGLAS of Glenbervie.

THE Lords found this sum not arrestable by Mr Douglas's creditors, though it is expressly assigned to him his heirs and assignees. This difficulty I stirred, but the Lords inclined to limit the meaning of the word "assignees" to "assignees for aliment." It appeared also a little new to constitute a principal sum for an aliment,—though as the sum was very small, not one year's aliment, I inclined to look over that; and the Lords adhered to the Ordinary's interlocutor, viz. Lord Arniston.

No. 9. 1739, Feb. 8. CHILDREN of DOUGLAS *against* DOUGLAS.

IN a process of aliment the Lords found so, that Sir John as representing his father, and having succeeded to his estate, was liable before their mother, though in the modification they would have consideration of the heir's circumstances, so as in case he could not afford a competent aliment, the mother behoved to make out the superplus (but she was not called in the process,) yet if the brother's obligation to aliment had been only *super jure natura* as a rich brother, and not as heir of the common father, they thought the mother would have been first liable. *2dly*, They found the daughter entitled to aliment even after majority till marriage, but found the sons entitled to aliment only till majority. *3dly*, Found no aliment for time bygone, except as to what debts they may have contracted for their aliment, which they remitted to be heard before the Ordinary.

No. 10. 1739, Nov. 16. WATSON *against* DAVIDSON.

THE Lords found, that the child's aliment fell under the act James VI., that is the triennial prescription; and the Lords found, that the tutor's acknowledgment does not prove it resting,—and what moved me much in this case was, that the tutor never had, nor can now count, and is broke; and his eldest son was executor to the minor, and liable to pay if any was owing, and the acknowledgment given not only after the tutory was ended, but a new prescription run.

(This Case is in the text erroneously referred to as *voce* PRESCRIPTION.)