

No. 11. 1748, Dec. 18. YOUNGER CHILDREN OF BISSET.

THESE children being unprovided, and seeking an aliment from the brother, whose estate appeared to be burdened with a heavy liferent, we stopped procedure till the mother was called; and it appears the heir had only L.118, and the widow L.94, though he was of the age of 15. They modified to the six younger children 1200 merks, or L.66. 13s. 4d., whereof L.46. 13s. 4d. from the heir, and L.20 from the widow, to commence from Whitsunday 1747, the term after Lessindrum's death, to continue till marriage or majority; but we would not modify any aliment to the eldest daughter, who is of age.

No. 12. 1751, Feb. 2. NAPIER *against* NAPIERS.

THIS apparent-heir, an infant, pursues these two liferenters for an aliment on the act of Parliament anent wardatars alimentering the fiars,* alleged this action is founded on an unwarrantable extension introduced by practice, noways founded on the words of statute, and ought not to be further extended; that the pursuer has no claim *super jure naturæ*, being only grand-niece to old Kilmahow; that the estate is so far bankrupt, that the pursuer neither does nor dare represent the defuncts; that the father's widow enjoys her liferent only by the bounty of some adjudgers who are preferable to her, and can remove her at pleasure, and it amounts only to L.40 sterling, or L.42 of locality; and that the young Lady (Lady Jean Bruce) was provided to above L.100 sterling, and for relief of the family quitted the half of it, and has now only L.33 free; that if the fee had been sold, the heir of the purchaser could not have claimed an aliment, and no more can the heir of the bankrupt, who will not represent and take the fee; and, *2do*, These are no more than scrimp aliments for the widows themselves. Answered: An apparent-heir has this action without entering, and though their liferents are small, they must spare some, that the fiar may not starve, and they ask not of the old Lady a decret personally, but a part of the liferent lands. The Lords thought, that where the estate was in these circumstances, the heir could not claim aliment; *2do*, That where the liferent itself was but a mean aliment for persons of that rank, that no aliment was due from them; *3tio*, The President thought we could not give lands by way of aliment, but an annual sum, which, in these circumstances, could not be decerned against the old Lady; and therefore we found that no aliment could be given in this case.

No. 13. 1751, July 10. AUCHINLECK *against* AUCHINLECK.

This was a process at the instance of an apparent-heir on the act 1491, against his mother and both his grandmothers, for an aliment, which was first decided 21st February last, when we found no place for aliment. He reclaimed, and insisted chiefly against his father's mother, Winram, an old woman of about 90, whose liferent was about 1000 merks, for his mother had only a very small liferent, with the burden of a very numerous family, and the mother's mother had but about 600 merks. Some of the Lords thought it not founded on the act 1491, and that it was an extension of that act by our practice, and of this opinion were Justice-Clerk and Kilkerran, as was the President when with us. But as all our law books and decisions founded it on the act 1491, I and others were of the same opinion, and thought it was directly in the words of that act, as the liferentrix's obligation to uphold houses, &c. which doubtless is founded on that act, as appears

* Act 1491. Cap. 25.