

## No. 11. 1748, Dec. 13. 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.

by the 15th act 1535. They also thought, that such a claim did not lie against the widow of the grandfather, but only against the widow of the father, and that the estate must be considered as at the grandfather's death; and if there was then sufficient for the aliment over the widow's liferent, that the mismanagement of that heir could not after his death give the next heir a claim of aliment against the grandmother; and in general it was said to be unjust after a Lady had been found in a liferent in the best way the law can secure her, that the mismanagement of the fiar should hurt her. But I and others thought, that we were to judge what is the law of Scotland, not what we thought ought to be the law; that the act speaks of all conjunct fiars and liferenters without distinction; and Balfour says expressly, "That when there are more liferenters than one, they must all contribute *pro rata*;" and therefore the estate cannot be considered as it was at the commencement of the first liferent. Craig and our other law writers are of the same opinion. The Court so found as early as 1525, which was but 34 years after the act; they so found in 1677; and though there is one decision on the other side in 1682, yet afterwards the Court decided according to the ancient practice, 27th November 1685, and others, quoted in the petition. *3tio*, They thought the old woman could not spare any thing out of her liferent of 1000 merks yearly, though precedents were quoted of much smaller liferents contributing; but that was an arbitrary question, that could not have any influence on our law, and (as I thought,) chiefly on that consideration the Court adhered, *renitentibus Leven et me*, and Minto, who was in the chair. (See No. 90, p. 454.)

No. 14. 1752, July 22. GRANT *against* CREDITORS of STRACHAN.

(See Note of No. 51. *voce* ADJUDICATION.)

No. 15. 1754, Jan 5. PATRICK URQUHART *against* WILL.

WILL was imprisoned at Stirling on a caption for a debt due to Ross, (for which Urquhart was cautioner, and as was said had paid,) and applied on the act of grace. Urquhart had obtained against him the Commissary of Aberdeen's decret in a process of scandal, decerning a pallinode to be performed in the kirk of Frasersburgh, and a small fine; and on a suspension, the letters had been found orderly proceeded, and expences given. Urquhart raised a caption on this decret, and arrested Will in prison, and afterwards presented a bill of suspension of the aliment modified, which Murkle refused;—and he reclaimed to us, and in the answers offered to obey the Commissary's decret as to the pallinode; and on advising bill and answers, we refused the bill as to the debt due to Ross, and found that the act of Parliament does not take place in the case of commitments for delicts; but in respect of the respondent's offer to obtemper the Commissary's decret, found that the charger ought either, on the respondent's enacting himself under the penalty of L.5 sterling to obtemper the pallinode, to set him at liberty, or otherwise to aliment him.

No. 16. 1754, Jan. 26. LORIMER *against* M'COULL.

LORIMER, a merchant in Edinburgh, having been imprisoned on captions at the instance of his creditors, applied to the Magistrates for an aliment on the act 1696, and they having allowed the creditors a proof of his secreting and concealing some of his effects, on advising the proof, they found that he did conceal several of his effects not given up in the condescence, in order to screen the same from his creditors; but found nevertheless, that he