Adamson, for aliment "of her and her bairns for the terms of Lammas and Halloweven last by past," and Barclay had arrested it by virtue of the bond for £400 granted by Adamson, the woman's husband. Decision was given on the question whether the amount secured by the alimentary provision was or was not more than enough for the maintenance of the woman and her children, and the Court, "considering the meanness of the sum, the quality of the woman, and the number of her seven bairns, found the means enough for her aliment, and that no part of it could be subject to her husband's debt." But they might have decided otherwise had they considered the aliment excessive. The Court, however, considered the question of the amount of aliment and adjudicated upon it.

The other case is that of *Blackwood* in 1677, M. 10,390, and there the Court decided in the opposite way from the case of *Edmonstone* and let in the diligence of creditors. Both of these appear to me to be cases in point, and it has been assumed in all the subsequent decisions that creditors can arrest an alimentary fund, in so far as the provisions exceed what is sufficient for the reasonable support of the beneficiary, and since then the Court have frequently been called upon to determine how far a sum left as an alimentary provision corresponded with the position and circumstances of the beneficiary. A very remarkable example of the class of cases I have just been referring to was the case of *Harvey* v. *Calder*, reported in 2 D. 1099, when one of the questions which the Court were called upon to decide was whether £1800 per annum provided to a peer was not so large a sum as to prevent it being wholly declared alimentary and exempt from legal diligence, and the Court held it was not. If they had been of opinion that it was, then on the authority of the older cases to which I have referred they would no doubt have let in the diligence of his creditors in so far as the sum exceeded in their opinion a reasonable alimentary provision. The question here therefore comes to be, whether the income of this fund, amounting as I understand to between £800 and £900 per annum, is to be viewed as more than sufficient for the reasonable aliment of the petitioner? As I understand it to be the opinion of your Lordships that this sum is in excess of what is necessary, I think that we should find the petitioner entitled to an alimentary provision of £500 a-year, and that the balance of the income should be open to the diligence of his creditors.

Lord Mure—I agree with the interpretation of the law which has been given by your Lordship on the present question. There can, I think, be no doubt, as we see from the older cases, that excess of aliment was subject to arrestment and the diligence of creditors, while the amount of aliment was a question which had to be determined in each case separately. In the present case I quite concur in the sum fixed by your Lordship, and consider it a reasonable aliment looking to the petitioner's position and circumstances.

Lord Shand—I am of the same opinion. I am not, however, quite satisfied that the precise point which we are here called upon to decide has ever been made matter of direct decision in any previous case.

We have, however, the *dicta* of Stair referred to by your Lordship, and besides that a series of decisions settling that an alimentary fund, so far as it exceeds the measure of aliment, is arrestable. I think the principle upon which these decisions have proceeded is a sound one, and that in so far as the sum left to the annuitant exceeds a fair aliment it should be subject to the diligence of his creditors.

In the present case we have a trust interposed, and it would have been quite an effectual provision for the truster to have made if he had declared that any misbehaviour on the part of the annuitant was to involve forfeiture of any excess over and above simple aliment, and further, that any fund thus created should fall back into the trust-estate.

No doubt in the present case the deed contains no clause of forfeiture, and no such restriction as I have suggested. There is here, however, an excess of aliment amounting to several hundred pounds a-year, and I agree with your Lordships in thinking that this sum should be treated like any other excess, and should be open to the diligence of the creditors of the beneficiary.

Lord Adam—I concur in the opinion expressed by your Lordship in the chair, and do not wish to express an opinion upon any matter beyond the point now before us.

The Court recalled the arrestments to the extent of £500.

Counsel for Petitioner—Mackay—H. Johnston. Agent—A. P. Purves, W.S.

Counsel for Respondent—D.-F. Mackintosh, Q.C.—Low. Agent—John Bell, W.S.

Friday, November 5.

FIRST DIVISION.

BOSWELL'S TRUSTEES *v.* PEARSON.

Interdict—Breach of Interdict and Contempt of Court.

A tenant who had been lawfully ejected from a farm by the landlord in consequence of breach of the conditions of the lease, refused to give up possession thereof, and having been interdicted by the Court from continuing the possession and molesting the new tenant and preventing him from taking possession, committed a breach of interdict. The Court in respect thereof *sentenced* him to be imprisoned for one month.

Sir William Montgomery Cuninghame of Corsehill, Baronet, and others, trustees of the late Sir James Boswell, Baronet, of Auchinleck, in the county of Ayr, presented the present petition and complaint for breach of interdict against John Pearson, farmer, sometime tenant of the farm of Mosshouse, part of the said estate of Auchinleck, in the following circumstances:—

The petitioners, as trustees, were proprietors of the estate of Auchinleck, and Mr James Howden, C.A., Edinburgh (also one of the petitioners) was factor and commissioner for the said trustees, with full power to output and input tenants.

In his capacity of commissioner Mr Howden

let the farm of Mosshouse to the said John Pearson on a nineteen years' lease from Martinmas 1881, at an annual rental of £53.

Pearson failed to pay the full rent due at Whitsunday 1885, and the half-year's rent due at Martinmas following, and an action of removing was raised against him in the Sheriff Court of Ayr, in which decree in absence was pronounced on 4th February 1886, ordaining him to quit the farm, lands, and pertinents of Mosshouse at Whitsunday 1886, under pain of ejection. A charge followed on this decree on 25th February 1886, and on 10th April thereafter, Mr Howden, as factor foresaid, let the farm to James Harper, with entry at Whitsunday 1886. Pearson refused to remove from the farm at Whitsunday 1886, and on the 26th May lodged a reponing note and defences in the action of removing. The note, which operated as a sist of diligence, was refused by the Sheriff-Substitute, and on appeal by the Sheriff.

Pearson still refused to leave the farm, and on 19th July he was formally ejected by a sheriff-officer, but after the departure of the officer he immediately resumed occupation of the premises. When the new tenant, Harper, endeavoured to obtain entry, Pearson threatened him and his servants with bodily violence, and prevented him from obtaining possession of the farm, and thereafter continued grazing, cropping, and making hay thereon. On 17th August following a note of suspension and interdict was presented to the Lord Ordinary on the Bills by the present petitioners, praying the Court to interdict respondent from continuing the possession of the said farm of Mosshouse, and from preventing the said James Harper from peaceably enjoying the same. The respondent lodged answers. On 3d September following the Lord Ordinary on the Bills (Lord Lee) having heard counsel for the petitioner and an agent for the respondent, passed the note on caution, and, under certain reservations and undertakings by the complainers, granted interim interdict.

Notwithstanding the interdict, Pearson continued to retain possession of the farm. The present application was accordingly made by the petitioners, the concurrence of the Lord Advocate having been obtained thereto. Harper was also a consenting party to the proceedings.

On 16th October the respondent was ordained to lodge answers in eight days.

The *inducie* having expired, and no answers having been lodged, the case was re-enrolled, and on Saturday 30th October an order was pronounced by the Court ordaining the respondent to attend personally at the bar on Thursday the 4th November. On the motion of petitioners' counsel the Court appointed this order to be intimated to the respondent by registered letter. The respondent appeared at the bar on 4th November, and stated that he was guilty of the breach of interdict, but being unable to state any explanation of his conduct, the Court continued the case until the following day in order to enable him to obtain the assistance of counsel.

On Friday November 5th the respondent having again attended at the bar, counsel for him confessed the breach of interdict and made an explanation in answer, to which the Court heard a statement by counsel for the petitioners.

LORD PRESIDENT—John Pearson, you have admitted the breach of interdict charged against you, and we are bound to consider in dealing with your case of what the breach of interdict consisted. It is very much to be regretted that a person in your condition of life, tenant of a farm in Ayrshire, should have resisted the action of the law in the way you have done; and not only so, but you have committed very serious injury and loss both upon your landlord and upon the incoming tenant by the course of conduct you have pursued. Instead of removing from the farm, in obedience to the decree of the Sheriff, you continued in possession of it, and prevented the incoming tenant from taking possession, and went on grazing, cropping, and making hay on the farm notwithstanding that you were no longer entitled to possession, and notwithstanding the rights, of which you were well aware, of the incoming tenant. This led to the interdict which was granted on the 3d September, and even after that interdict was served upon you, you still continued to retain forcible possession of this farm. Now, that is an offence against the law which cannot be passed lightly over. It is impossible to allow the orders of the Court to be set at naught, and treated with contempt as you have done by that course of conduct, and therefore the Court feel, while they are unwilling to inflict a severe sentence upon you in the circumstances of the case, that they cannot do less than order you to be incarcerated for one month.

The Court pronounced the following interlocutor:—

> "Find, on the respondent's confession at the bar, that he has broken the interdict granted by Lord Lee on 3d September 1886: Therefore decern and adjudge the respondent to be imprisoned for the space of one month from this date, and thereafter to be set at liberty, and for that purpose grant warrant to officers of the Court to convey the respondent, the said John Pearson, from the bar to the prison of Edinburgh, and thereafter to be dealt with in due course of law."

Counsel for Petitioners—Macfarlane. Agents—Scott Moncrieff & Trail, W.S.

Counsel for Respondent—Galloway.

Tuesday, November 2.

FIRST DIVISION.

ALLIANCE HERITABLE SECURITY COMPANY AND ANOTHER *v.* THE HERITABLE PROPERTY TRUST (LIMITED).

Public Company—Winding-up—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 79 *and* 80 —*Companies Act* 1880 (43 *Vict. cap.* 19), *sec.* 7. Procedure where a creditor of a limited company petitioned for a winding-up order, and before the *inducie* expired the Registrar of Companies had struck it off the register.

The creditor of a company presented a petition to