being Mr Arrat's ordinary lawyer, could not object the nullity of the form of the bills he had granted Mr Arrat, that they bore annualrent and penalty, although the bills were written by Mr Arrat the drawer.—Adhered, 7th December, by President's casting vote.

ADVOCATION.

No. 1. 1734, July 24. MONRO *against* M'MILLAN.

THE Lords found a cause within 200 merks could not be advocated even upon iniquity, but remitted to the Ordinary to remit the cause with such instructions as he shall find proper.

No. 2. 1750, July 26. JAMES URE *against* BUCHANAN.

THE Lords found, that in processes in the Sheriff-Court under L.12 sterling, as we cannot advocate, so we cannot remit with instructions; and therefore Strichen having remitted this cause with instructions, we altered and remitted to the Sheriff to proceed as he should think fit.

*** We gave the same interlocutor in an advocation 30th November 1750, Thomson against Vallange, of a sum under L.12, as we did 26th July last, Ure against Buchanan. We recalled the remit with instructions, and recommended to him to refuse the bill of advocation *simpliciter*.

ALIMENT.

No. 1. 1734, July 12. COUNTESS of WEMYSS *against* HER CHILDREN.

THE Lords found no aliment due for the children.

No. 2. 1736, Feb. 4. VANS *against* VANS.

THE Lords found, that the whole pay must be accounted for without any abatement for the aliment, as had been before judged in the case of Lord Kimmergham's creditors and daughter. Royston and I differed, because an officer's pay is in construction of law alimentary, and for that reason alimentary; and therefore, though a father alimenting *præsumitur* to do it *ex pietate*, which will even preponderate the presumption *debitor non præsumitur donare* in the case of a common debt, which was Lord Kimmergham's case, yet a father uplifting an alimentary provision of his bairns, and accordingly alimenting, is presumed to do it out of their proper fund.

THE Lords found Patrick Vans's pay uplifted by his father as administrator-in-law did not bear annualrent, in respect he alimented him; and I think the judgment right, but how does it tally with the former one of 4th February last?—29th June.

No. 3. 1736, Feb. 13. CREDITORS and CHILDREN of FALCONER.

MR MERCER, the trustee for the daughter, having got no payment, we were pretty unanimous that he should be preferred upon each subject in his proper order, and that

for the whole sum; but if he had got actual payment of a part, several of us should have been of a different opinion; and that he could only have been preferred for the remaining sum. But we found the daughter could have no aliment in competition with creditors where the father was *obæratus*,—and yet the President and some others were of a different opinion.—26th February, The Lords refused a bill without answers, and adhered as to the aliment.

No. 4. 1736, July 28. MONCRIEFF *against* FAIRHOLM.

THE Lords found aliment due, without obliging her to live with her father. Lord Newhall laid his opinion on the voluntary obligement to aliment. I and others doubted of that, because that would extend to obligements by parents in their contracts of marriage to aliment the children, which would not oblige them to give a separate aliment. But we laid our opinion upon the law, that a liferenter must aliment the fiar.

No. 5. 1737, June 10. BLAIR *against* SCOTT'S TRUSTEES, &c.

THE case was fully argued upon the Bench. Arniston and Kilkerran thought, that the pursuer being excluded from the succession by the contract of marriage, whereby the liferent was constituted, and being only brought back to the succession after the liferent took effect, had no claim of aliment, though the contract remained still a personal right, and he was always heir of the investiture. *2dly*, That however this claim of aliment might be founded against the liferenter, yet it is not competent against the creditors who have affected it, because this claim is not founded on the act 1491. Several of us differed in both; but upon a division, it carried to sustain the defence against the aliment.—Adhered 4th November.

No. 6. 1737, Nov. 18. MARY BOSWELL *against* DAVID BOSWELL.

SOME of us doubted, whether we ought to extend our former decisions of aliment to this case, where this defender had an employment? Others doubted, whether we should continue the practice of extending the act for alimenting ward vassals to the case of liferenters and heirs? But I own, I thought that matter had gone too far by our former decisions to alter it now, though I think the extension nowise founded on reason or the analogy of law. But I doubted, whether the heir could bring the annualrents of personal debts into the calculation, to exhaust the rent not liferented? And, on the whole, as there was no evidence of the extent of the rent or debts, we remitted the case to the Ordinary.—13th January.

THE Lords thought, that the relict's aliment to the term should be proportioned to his estate, not to her jointure, and therefore gave her only a proportional part of the conventional aliment that she had during her separation from her husband, unless she would prove that the circumstances of the estate could bear more.—(N.B. Arniston doubted whether an heir of an encumbered estate should at all be burdened with the relict's aliment?) And they found that she had right to the household plenishing, heirship included. Some founded their opinion upon this, that there was not only a reservation but a disposition of the household furniture, whereas had it been barely a reservation or exception, it could go no farther than her legal right would have gone, and consequently would not have included heirship. Arniston thought, that though it had been only a reservation or