(OF THE ACT 1491.)

1790. *January* 27. PRIMROSE YOUNG *against* CHARLES CAMPBELL.

No 29.
Aliment found due to a widow by the repreſentatives of her huſband, her legal proviſions being inſufficient.

THE huſband of Primroſe Young died in poſſeſſion of effects, both heritable and moveable. But, in conſequence of his engagements as a partner of Douglas, Heron, and Company, which were found to be a burden on his moveable eſtate, ſhe could derive little or no benefit from her *jus relictæ*, while the ſubjects liable to her claim of terce, were too inconſiderable to afford her a ſufficient maintenance.

She therefore inſtituted an action againſt Charles Campbell, the nephew and general repreſentative of her huſband, for a ſuitable aliment out of her huſband's whole effects. *See* 6th March 1776, Macculloch *; 15th December 1786, Maclean †.

It was conſidered as a fixed point, that an aliment was due, nor indeed was this diſputed by the defender.

THE LORDS found the purſuer entitled to an aliment; which, by a ſubſequent interlocutor, of date 10th March 1790, they fixed at L. 50; this being conſidered as equal to a fourth of the free produce of the effects belonging to the deceaſed, both heritable and moveable.

Reporter, *Lord Dreghorn.* Act. *M. Roſs.* Alt. *Maconochie.* Clerk, *Sinclair.* *Craigie.* *Fol. Dic. v.* 3. *p.* 22. *Fac. Col. No* 104. *p.* 198.

1764. *July* 11. HELEN ADAM *against* Sir ANDREW LAUDER.

No 30.
A grandfather holding an entailed eſtate, was found bound to aliment his ſon's wife. *See* No 26. He was not bound to continue the aliment after his ſon's death.

WILLIAM LAUDER, junior, of Fountainhall, intending to go abroad to the Eaſt Indies, as an enſign in the ſervice of the Eaſt India Company, married, privately, Helen Adam, a ſervant in his father's houſe, and ſoon after left this country. In his abſence ſhe brought a proceſs of aliment againſt Sir Andrew Lauder, her huſband's father, ſetting forth, That he, the defender, was bound to aliment his ſon, and conſequently his ſon's wife as part of the family; and that ſhe was entitled to claim a ſhare of this aliment for herſelf, as her huſband had deſerted her. An aliment was accordingly decreed her of L. 15 Sterling yearly. But the ſon afterward having died in the Eaſt Indies, Sir Andrew ſtopped payment of the aliment; and, being charged upon the decree, he brought a ſuſpenſion upon the following ground, That he was under no natural or legal obligation to aliment his

* No ſuch caſe is yet reported.—The caſe probably meant is, Thomſon againſt M'Culloch, 6th March 1778; Fac. Col. No 19. p. 34, which will be found in the next diviſion of this Title, viz. ALIMENT due *ex debito naturali*.

† The caſe meant here is Lowther againſt M'Laine; Fac. Col. No 297. p. 456. *See* next diviſion of this Dictionary.

No 30.

son's wife after his son's death. And the Judges, by a great plurality, found, That after the dissolution of the marriage, Sir Andrew was not bound to aliment his daughter-in-law.

Fol. Dic. v. 3. *p.* 21. *Select Dec. No* 220. *p.* 284.

1751. *July* 10. AUCHINLECK of Woodcockdale *against* JANET WINRAM.

No 31.
No aliment found due to an heir, where the provisions due by the proprietor's contract of marriage to younger children, exceeded the value of the estate.

James Auchinleck of Woodcockdale, left at his death, 1735, James, a son, and several other children; and his estate burdened with the liferent of the lands of Woodcockdale, of 800 or 900 merks yearly rent, and a house in Edinburgh of 300 merks rent, to Janet Winram his mother; an annuity of 1300 merks to Elizabeth Turnbull, his relict; and the liferent of the lands of Balglaffie, of 800 merks, to Katharine Garden, relict of George Turnbull of Balglaffie, his mother-in-law: With these burdens, and the interest of his debts, without reckoning children's provision, the estate was more than exhausted.

James Auchinleck of Woodcockdale, the heir, pursued the three liferenters for an aliment; in which the defence was chiefly made for Janet Winram; and for her it was *pleaded*, That being a woman now above ninety years of age, she was not obliged to aliment the heir out of what was no more than sufficient for her own aliment.

2do, The estate, when her liferent was laid upon it, afforded, besides, a competency to the proprietor: And as it is since reduced by the contractions, not of the granter of her liferent, but a subsequent heir, these contractions cannot bring a burden upon her, to which she was not originally subject.

3tio, There is no estate to which the pursuer can succeed; his father being bound, by his contract of marriage, to pay 54,000 merks to the children of the marriage, according to a division thereby settled, and not to leave him the estate, which is not of the value of this sum.

Pleaded for the pursuer: He is an heir in the estate of Woodcockdale; and is entitled to an aliment from the liferenter thereof. By considering the civil and feudal law, it appears there is a foundation for this obligation, older than the statute 1491; by analogy from which it is generally supposed to have been introduced. Justinian statutes, that when an universal liferent is left to the relict, the children shall be entitled to a third of the effects for aliment, 18. Novel. c. 3. Craig, l. 2. D. 17. § 20. says on this constitution, 'Providendum filiis putat ne 'egeant; quod ad heredem feudi traductum est; ut semper aliqua ejus cura ha-'beatur ne egeat; ita tamen detrahendum, vel ex custodia, vel usufructu uxoris, 'si heres non habeat aliunde quo alatur;' and cites a decision in the case of the Laird of Swinton. It is the same thing whether the estate is subject to an universal liferent, or if that part of it which is not subject, is exhausted by debts; Hope, *de heredibus*; Stair B. 2. tit. 6. § 5.; Mackenzie, title *Servitudes*, § 45.