

*The Widow of M'Culloch of Forchousikie against His Heir.* There had been no contract; so that all the provision which the widow had, was a terce of certain lands, in which her husband was infest. This afforded her £40. But there were certain lands, in which her husband was not infest, but not fraudulently, or with a view to disappoint her. Out of the rents of these, the Lords gave her an additional aliment of £20 *per annum*, for seven years. This afforded her in whole £60, which was precisely a third of the heir's free income, after paying interest of debts and aliment to four younger children; which aliment they also fixed at £60. The heir's total free income was £240.

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1780. *June 24.* STEWART of STEWARTHALL *against* MRS CHARLOTTE CAMPBELL.

No claim for aliment lies at the instance of the heir, fiar of a tailyed estate, against the widow annuitant of the predecessor, entitled to said annuity by her contract of marriage. She is not a liferentrix in the sense of the law; she is a creditor, against whom no claim lies.

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## APPEAL.

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1776. *August 3 and December 11.* HONEYMAN *against* IRVINE.

AN appeal to the House of Lords, and served, stops all proceedings; and, according to legal ideas, there can be no proceeding after an appeal; for it is understood, by a fiction of law, that the records of the Court appealed from are removed into the House of Lords in consequence of the appeal. So that no record remaining before them, the Court appealed from has no cause in which they can proceed.

Disputes having happened betwixt the burghs of Kirkwall and Stromness, they came to law. Grahame was agent for Stromness, and, for credit to enable him to carry on the lawsuits, drew upon Honeyman. Honeyman answered his drafts,—and, for his reimbursement, got indorsations from Grahame to certain bills granted him by the inhabitants of Stromness for their share of the expense.

These bills were put in suit at the instance, and in the name of Grahame. The inhabitants disputed the payment, and raised a reduction of the bills, in which they called both Grahame and Honeyman. The proceedings, however, were in name of Grahame, but plainly for behoof of Honeyman, who never disclaimed the process. The pursuers prevailed, and the bills were reduced; not only so, but expenses were given,—and given against the defenders, conjunctly and severally; which included Honeyman.

Meanwhile, Grahame, reduced to poverty and on the poor's roll, entered an appeal to the House of Peers. This appeal was served;—notwithstanding of which, the pursuers went on, and insisted against Honeyman for the expenses, —alleging that Honeyman was no party to the appeal,—and that it did not stop procedure against him. Honeyman ANSWERED,—That the whole former procedure had been against Grahame: that, as to him, he had refused to have any thing to do with it. Grahame was bound to him *primo loco*; the inhabitants, who had granted the bills, *secundo loco*. But, though these bills were reduced, still Grahame remained bound to him as before. Therefore he was a cipher in the affair; and, as to the appeal, it was plain, if Grahame carried the appeal, he was free of expense, which was only an accessory claim against him; and, therefore, until the principal claim was discussed, the accessory could not proceed.

“The Lord Gardenston, Ordinary, found, that the appeal entered by Grahame was no bar to proceeding against Honeyman.” But the Lords took a safer course. They pronounced this interlocutor:—“In respect of the appeal entered by Grahame, and that though not entered by Honeyman, yet as it is still competent for him to become a party thereto,—therefore supersede advising this petition till three weeks after next meeting of Parliament; and then appoint parties to report, whether any appeal has then been entered by Honeyman; or whether he has made himself a party to the appeal entered by Grahame.”

And accordingly, a report having been made to the Court, that Grahame had withdrawn his appeal, (11th December 1776;) the Lords proceeded, and adhered to the interlocutor, finding Honeyman, as well as Grahame, liable in expenses; reserving his action of relief against Grahame, and Grahame's defences, as accords.

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1776. *August 1.* PUBLISHERS of the EDINBURGH REVIEW *against* JARDINE.

As, by the forms of Parliament, no petition of appeal is receivable at a meeting of adjournment, and not for dispatch of business; the publishers of the Edinburgh Review, against whom the Schoolmaster of Bathgate had obtained decree for damages, applied to the Lords, by bill of suspension, praying that execution might be stopt until Parliament met for dispatch of business; and that they had thereby an opportunity to bring it under review, which it was their intention to do. The Lords, 1st August 1776, upon a verbal report of the Lord Ordinary on the Bills, refused the bill unanimously.

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1776. *March* . GORDON *against* WILLIAM TAYLOR, Writer in Edinburgh.

AN appeal stops execution, in terms of the Resolution of the House of Lords, anno 1709.