

S E C T. V.

Relict's Aliment till the term after her Husband's Death.

No 117.

1662. February 1. COUPER against LADY TOFTS.

ALTHOUGH a defunct's family be kept in his own house till the next term after his death, the LORDS found, That the relict was free to live where she pleased, and allowed her a modification for her entertainment proportioned to the life-rent provision, though she life-rented an annualrent, the payment of which commenced at the next term.

Fol. Dic. v. 1. p. 395. Stair.

* * * Gilmour reports the same case :

1662. January.

UMQUHILE Dame Jean Skeen, Lady Tofts, being infeft in an annualrent of 2000 merks out of her husband's estate; and she having nominated Jean Couper, her sister's daughter, her executrix, the said Jean pursues a pointing of the ground against this Tofts and the tenants of the ground, for payment of the bygone annual-rents, resting from the death of the said deceased Tofts, to the death of his said relict; and also for an aliment due to the relict, betwixt her husband's decease, which was in February, and the term of Whitsunday thereafter, which was the first term's payment of the annualrent.—It was *alleged*, There could be no aliment; *1mo*, Because the relict remained not *in familia* till the term, but by herself lived at Edinburgh, the family being in the country. *2do*, If any aliment should be decerned to her, it should deduct *pro tanto* of her Whitsunday's annualrent.—It was *answered* to the *first*, That her husband having died at Edinburgh, and having no children the relict could care for, she might lawfully remain at Edinburgh; and all the aliment her executrix craved, was a proportion of the annualrent provided to her by her contract of marriage.—To the *second*, it was *answered*, That till the term of payment of the annualrent, the relict could not live perquire; and though a life-renter of the lands, dying before Whitsunday, will not get aliment of the moveables till the term of payment of her life-rent, which possibly will not be payable till Martinmas, or betwixt Yule and Candlemas; yet in this case there is a vast difference, because a life-renter of lands dying after Whitsunday before payment, at Martinmas, or after Martinmas, her executor will get an half year's rent, she dying before Martinmas, and a whole year's rent dying after Martinmas, whatever the term of payment of her rent be. Whereas a life-renter of an annualrent, dying betwixt terms, at any time, her executrix will get nothing of the annualrent payable at the term thereafter.

THE LORDS decreed a proportion not to be allowed in the subsequent term's annualrent.

No 117.

February 1.—IN a count and reckoning pursued at the instance of Jean Couper, executrix to Jean Skeen, Lady Tofts, her mother's sister, against the Laird of Tofts, it was *alleged*, That the Laird of Tofts could have no modification for her aliment after her husband's death to the next term; because her defunct husband had a family in the Merse, (with whom she did not remain) till Whitsunday after his death, who died in January before, she having remained all that time in Edinburgh.—It was *answered*, That her husband having died in Edinburgh, and there being no children betwixt them, she might very well remain at Edinburgh; and for entertainment, she craved no more but what the Lords should modify.

THE LORDS modified a proportion of what she was provided to by her contract of marriage, which being 2000 merks yearly, they made it 600 merks.

And it being *alleged*, That this 600 merks should be allowed to her in part of payment to her of the 1000 merks which was payable to her at the Whitsunday after her husband's death; the LORDS found it should not be allowed; for at what time soever a liferenter of an annualrent dies, the term's annualrent due after their death, will not fall to the liferenter's executors, but to the heir; and therefore they allowed the maintenance till the first term's payment of the said annualrent, who, if she had died before the said term, her executors would not have gotten the annualrent.

Gilmour, No 30. p. 23. & No 25. p. 20.

* * See Belshes against Belshes, No 62. p. 3873. which appears to be the same case as reported by Stair.

1708. *January 21.*

LORD JUSTICE-CLERK and his LADY, *against* JOHN HAMILTON of Bangour.

LORD GRANGE reported the mutual processes betwixt John Hamilton of Bangour, and the Lady Whitelaw, and my Lord Ormiston, Justice-Clerk, now her husband. Sir William Hamilton, Lord Whitelaw, granted a bond for L. 7000 Sterling to his Lady, failing heirs of his own body. She pursues a constitution of this debt against Bangour, who repeats a reduction of it on these reasons, *imo*, It is null, because though it bear witnesses inserted and subscribing, yet it is offered to be proved by these witnesses oaths, that the paper was presented to them, folded up to the very doquet and signing, and they saw nothing above the said Lord Whitlaw's subscription; so that it might have been a half sheet of blank paper for them; and there was a marginal note to which they are made to be witnesses, and yet saw it not; and if this practice were once allowed,

No 118.

A Lady, wh in lieu of her jointure, had a bond for a great sum from her husband, payable the term after his decease, craved aliment for maintaining the family five months, from her husband's death till the term after that event. The Lords found aliment due, notwithstanding the bond.