

a former obligation; but he could not then have in his view an obligation which did not exist, and was so casual as that it might have never existed by his surviving his Lady, or living till the day before the term. No 118.

THE LORDS found an aliment due, and modified L. 100 Sterling to the Lady for maintenance of the Lord Whitelaw's family from the 14th December 1704, to Whitsunday thereafter. See OBLIGATION. PRESCRIPTION. PROCESS.

Forbes, p. 310.

. In this cause, a point was determined relative to the funeral expenses of the defunct. See No 2. p. 4981.

1712. June 20.

ISOBEL MONCRIEFF and her HUSBAND *against* CATHARINE MONYPENNY,
Lady Sauchope.

GEORGE MONCRIEFF of Sauchope, in his contract of marriage with Catharine Monypenny, obliged himself to infest her in a liferent yearly annuity of eight chalders of victual, to be uplifted betwixt Yule and Candlemas furth of his lands, beginning the first year's payment, betwixt the first feast of Yule and Candlemas after his decease. George Moncrieff having died November 19th 1707, Catharine Monypenny, his relict, craved an aliment to be modified to her, from the 19th November, till Candlemas thereafter.

Alleged for Isobel Moncrieff, the husband's executrix, No aliment can be allowed, because, aliment to a relict till the next term after her husband's decease, is indulged only when she hath neither immediate access to her jointure, nor a fund of credit, that she may not be left to live upon the air; as when her liferent is provided by way of annualrent, in which case, if she happen to die betwixt terms, or before the first term of payment of her jointure, she gets nothing at all; and seeing that may fall out, no person will credit her in prospect of her jointure; which reason for an *interim* aliment ceaseth in this case, where the relict's security in a liferent annuity out of certain lands, afforded her a fund of credit immediately after her husband's decease; seeing, whether she survive Whitsunday or Martinmas or not, she has still right to less or more of her jointure. This distinction seems to be established by a solemn decision *in terminis*, Couper *contra* L. Tofts, No 117. p. 5908.

Answered for the Relict. There is no solid difference betwixt a liferent provision of annualrent, and a liferent provision out of lands, where the provision doth not commence till the first term after the husband's death. For here lies a necessity of an alimentary provision *medio tempore*. Whether the liferent be due the next term after the husband's decease or not, by the re-

No 119.

A relict provided to an annuity to be uplifted betwixt Yule and Candlemas after her husband's death, was allowed a sum for her aliment from her husband's death till the commencement of the annuity.

No 119.

relict's living till then, or dying before; or whether she have a fund of credit or not, aliment is due to her by a general rule, and not in particular cases only. So that she is entitled to an *interim* aliment by a general rule, whereby a relict, having a jointure by a former husband, or being proprietor of lands as an heiress, hath right to such an aliment; which proceeds rather upon the motive of natural obligation, than that of mere necessity. As to the objected practick, it makes for the relict, since there aliment was decerned not to be allowed in the next term's rent.

THE LORDS modified a sum to the relict for her aliment from her husband's death, till the commencement of her jointure.

Forbes, p. 601.

1713. July 15.

The CREDITORS of ROBERT SCOTT of Harden, and JEAN KERR, his Relict, Competing.

No 120.

IN a competition betwixt the Lady Harden and her deceased husband's creditors, THE LORDS found, that the extent of the Lady's jointure is not to be the rule of alimending the defunct's family till the term after his death, but the quality of the person, and condition of the family left by him.

Fol. Dic. v. 1. p. 395. Forbes, p. 703.

1737. November 18.

MARY BOSWELL against DAVID BOSWELL.

No 121.

How much is to be allowed to the relict for aliment till the term is arbitrary, according to circumstances: The jointure is not the rule; nor was a separate aliment found to be the rule, which she had complied with, rather than live with her husband; but in respect of the circumstances of the estate, the LORDS, in the present case, allowed her only a proportion of the separate aliment, unless she show cause from the circumstances of the heir for a larger allowance.

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

* * C. Home reports the same case :

By contract of marriage betwixt Andrew Boswell and the said Mary, he provided her in the equal half of his estate, which was, in whole, about 1200 merks a-year; as also to the mansion-house, yards, &c. which she accepted, in full satisfaction of all terce of land, third part of moveables, and others whatsoever, that may befall to her, by and through her husband's decease, in case she survive and outlive him, except her abuilziements, ornaments,