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

exception without an express clause disponing, yet being a particular subject, (household plenishing) it would have implied a disposition, and had the same effect.—18th Nov.

No. 7. 1738, Dec. 8. SWINTON of Strathore *against* MRS SWINTON.

STRATHORE, Clerk of Canongate, sold his office to Ninian Cunningham for a bond of annuity of 500 merks during life in way of aliment, and not to be arrestable by creditors. Strathore had granted his daughter-in-law a bond of 200 merks *per annum* for alimenting her children, his grandchildren. She arrested in Mr Cunningham's hands,—and in the forthcoming before the Sheriff, Strathore alleged that it was not arrestable, being alimentary, and come in place of an office whereof the profits were not arrestable. *2do*, He had *beneficium competentiæ*. The Sheriff sustained the defence, and upon an advocation by the pursuer, the Lords, *me referente*, found the annuity not arrestable,—and what moved them was, that the profits of the clerkship sold were not arrestable; and though if the annuity had been more than a necessary aliment, they thought the surplus would have been affectable by creditors, as they awarded in the case of their own Macers, yet this was no more than a reasonable aliment for the defender's own family.

No. 8. 1738, Dec. 19. CREDITORS of DOUGLAS of Glenbervie.

THE Lords found this sum not arrestable by Mr Douglas's creditors, though it is expressly assigned to him his heirs and assignees. This difficulty I stirred, but the Lords inclined to limit the meaning of the word "assignees" to "assignees for aliment." It appeared also a little new to constitute a principal sum for an aliment,—though as the sum was very small, not one year's aliment, I inclined to look over that; and the Lords adhered to the Ordinary's interlocutor, viz. Lord Arniston.

No. 9. 1739, Feb. 8. CHILDREN of DOUGLAS *against* DOUGLAS.

IN a process of aliment the Lords found so, that Sir John as representing his father, and having succeeded to his estate, was liable before their mother, though in the modification they would have consideration of the heir's circumstances, so as in case he could not afford a competent aliment, the mother behoved to make out the superplus (but she was not called in the process,) yet if the brother's obligation to aliment had been only *super jure naturæ* as a rich brother, and not as heir of the common father, they thought the mother would have been first liable. *2dly*, They found the daughter entitled to aliment even after majority till marriage, but found the sons entitled to aliment only till majority. *3dly*, Found no aliment for time bygone, except as to what debts they may have contracted for their aliment, which they remitted to be heard before the Ordinary.

No. 10. 1739, Nov. 16. WATSON *against* DAVIDSON.

THE Lords found, that the child's aliment fell under the act James VI., that is the triennial prescription; and the Lords found, that the tutor's acknowledgment does not prove it resting,—and what moved me much in this case was, that the tutor never had, nor can now count, and is broke; and his eldest son was executor to the minor, and liable to pay if any was owing, and the acknowledgment given not only after the tutory was ended, but a new prescription run.

(This Case is in the text erroneously referred to as *voce* PRESCRIPTION.)