

lar, for I thought that the wife's contractions would be effectual to affect the subject of the aliment, but not the wife herself or her separate estate. But in this I was *solus*. However, several were of opinion that the Lady was not here liable on another ground, that the lands the subject of the aliment were sold before these furnishings. But it carried that she was liable, because they thought the price came in place of the lands, the Lady got none of it, and all was managed by the husband. 13th February, The Lords altered. They thought that an aliment thus constituted to a trustee for the wife and children as a cover for the husband who continued the management, was no sufficient reason for altering the law that a wife cannot bind herself. 25th February Adhered.

No. 17. 1743, Jan. 25. Feb. 18. LAURIE *against* EXECUTORS of HIS WIFE.

By Laurie's contract of marriage the wife's provisions are declared to be in satisfaction of all that she, her executors, or nearest of kin, could claim by or through the decease of the husband. The wife predeceased, and her executors claimed a third of the moveables. Arniston was clear that the clause extended or was meant to extend to both cases. I thought it was a *questio voluntatis* what the parties intended, and I greatly doubted of extending the clause beyond the words. The President was clear for the pursuer, who carried it by the casting vote of the President. *Pro* were Royston, Drummore, Haining, Strichen, Murkle, *et ego*. *Con.* were Kilkerran, Arniston, Dun, Balmerino, Monzie, Leven. Altered 18th February. Murkle changed, and Haining absent, but Justice-Clerk was for adhering, and Monzie absent. 13th December Adhered.

No. 18. 1743, July 20. M'WHIRTER *against* MILLER.

A MAN'S WIFE died in 1715, leaving a son then about nine years of age, who lived till 1730 or 1731 and died, and some years after the sister of the deceased's wife sued Miller the husband for the wife's third of his moveables. The defence was, that the son of the marriage lived after his mother fifteen or sixteen years, during which the whole moveables pertaining to the father, which were none other than his outsize and insight plenishing; corns and cattle were all charged; that the father as administrator-in-law to his son having disposed of the moveables, was accountable therefor to his son, and which obligation being *in hereditate* of the son descends to his nearest of kin, and he has bequeathed the same to his father, who is also his nearest of kin. This case was well and full argued for the father by Lord Advocate and Mr Grant, to whom it was recommended by the Court to assist Mr Andrew M'Dowall, and by Mr Charles Erskine and Mr Lockhart for the pursuer, and was the 20th July argued fully on the Bench for two hours,—and at last it came out that the wife died only in 1735, when the son was about 18 or 19 years of age, and the question was put first, Whether a wife's children attaining possession of her third of her husband's moveables needed confirmation to bar the claim of any after nearest of kin? and it carried by a great majority that confirmation was not necessary. The next question was, Whether there was sufficient ground here to presume such possession? and it carried that there was. As to this last my opinion was, that the whole being disposed of during the son's life, he became liable to his son for the value, which was sufficient, and that the father disposing was the same as if the son had disposed. 2d November, Adhered as to the first point.