

1777. *February 22.* WILLIAM PURDIE and OTHERS, Proprietors of Houses in Stephenlaw's Close, *against* PROCURATOR-FISCAL of GUILD COURT of EDINBURGH.

THESE Proprietors, having obtained a judge and warrant from the Dean of Guild of Edinburgh, were proceeding in their buildings, when they were stopt by an interdict pronounced by the Dean of Guild, at the instance of the Procurator-Fiscal. An advocation having been applied for by them, the bill was past, 25th July 1776; but, the letters not being expedite, the diet for comparence elapsed: the reason of this was, that a communing intervened, and the affair lay over till February 7, 1777. But the communing being at an end, Purdie, and the other builders, were desirous to proceed in their building, and to have the advocation discussed; but, in doing this, the Procurator-Fiscal, who acted only for the public, declined to take any step, leaving them to proceed as they should be advised. The question came to be, What method was to be followed by them to bring forward the question? It was proposed, *first*, That they should expedite the letters of advocation, and either warn the defender in the inferior court, *apud acta*, or execute it against him as a summons. The objection was, neither of these things were now competent,—the day of comparence being long ago lapsed. It was proposed, *secondly*, That they should apply, by petition, for a warrant to discuss upon the bill: it was objected,—Such application was incompetent; being only competent at the instance of the person against whom the advocation was obtained, and who was entitled to the *inducia*. It was proposed, *thirdly*, That they should apply by a new bill of advocation, setting forth the former; and, this being past, that they should expedite the letters, and proceed in common form. They chose the second method, and this day, (22d February 1777,) applied, by an intimated petition, to have the reasons of advocation discussed upon the bill.

The Lords were divided; but at last, "Finding no sufficient reason to go against the established form, *viz.* That such application is competent only at the instance of the person against whom the advocation is obtained,—they refused the petition."

ADVOCATION. See also JURISDICTION.

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## ALIMENT.

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1778. *March 7.* M'CULLOCH *against* M'CULLOCH.

THE decision, 111, *New Coll.* No. 44, That a mother is entitled to an aliment from her eldest son, *super jure naturæ*, was this day confirmed, in the case,

*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.