

No. 6. not altogether of dues paid by entrants, but of donations made from time to time by charitable persons, which must be considered as an eleemosynary fund, affording a just claim to the widow of every freeman in destitute circumstances; Finlay against Newbigging, January 15, 1793, No. 115. p. 2009. At least, although the pursuer might not have been able to make effectual a claim against the Corporation to be put upon their pension list; yet having been allowed to remain for a considerable time upon it, her claim resolves itself into an exception against the annuity being withdrawn, which must require something farther to justify it than the mere opinion of the managers.

The Court altered the interlocutor of the Lord Ordinary, and assoilzied the defenders.

Several of the Judges seemed to think, that the pursuer had a legal claim to such a provision out of the funds of the Corporation, as was usually allowed to widows of freemen in her circumstances, or at least that the trade were not entitled to withdraw the pension without instructing the allegations which were made against her, and shewing that she was not a fit object of charity, more especially as part of the funds consisted of donations expressly devoted to such purposes. But the majority of the Court held, that these matters should be left entirely with the Corporation, to be regulated by them according to principles of sound discretion; that they had better opportunities of being acquainted with the circumstances of each case than the Court could have; and that, if actions of this sort were to be sustained, the profits of a fund destined for charitable purposes might be often expended in unprofitable litigation.

Lord Ordinary, *Glenlee.* Act. *Corbet.* Agent. *J. Orr.* Alt. *W. Erskine.*
Agent, *R. Hotchkiss, W. S.* Clerk, *Pringle.*

J.

Fac. Coll. No. 83. p. 185.

1803. May 19. TURNER against VANNER and Others.

No. 7.

The aliment allowed to a widow until the term when her provisions become payable, restricted to the sum provided by a contract of separation, which had been entered

By a contract of marriage, entered into between James Lauder of Whitslade, and Helen Elizabeth Turner, an annuity of £250 was provided to her, “ in full of all she could any way be entitled to or claim as terce or locality of lands, half or third of moveables, or any other manner of way, *jure relictae*, by and through the predecease of the said James Lauder, her apparent husband.” This annuity was to be paid half-yearly, and the first payment was to be made at the term of Whitsunday or Martinmas after her husband’s death, for the half-year following. A few months after the solemnization of their marriage, a contract of separation was entered into, in which “ the said James Lauder binds and obliges himself to make payment to the said Mrs. Elizabeth Helen

“ Turner of the sum of £160 Sterling yearly, for her support and maintenance, payable at two terms in the year, Whitsunday and Martinmas, by equal portions ; declaring the first term’s payment to have commenced at the term of Martinmas last, for the half-year’s allowance from that term to Whitsunday next ; and the second term’s payment at Whitsunday next, for the half-year from that term to Martinmas thereafter, and so forth yearly and termly, until the conventional provision of £250 Sterling, provided to the said Mrs. Elizabeth Helen Turner by her marriage-contract after mentioned, shall open and fall due by the death of the said James Lauder, &c. ; which yearly allowance of £160 Sterling, the said Elizabeth Helen Turner, with consent foresaid, accepts of in full of every claim whatever, for aliment or otherwise, competent to her in consequence of such separation.”

No. 7.
into between the parties, although a greater anxiety had been secured to her under the contract of marriage.

The terms of the contract of marriage are then enumerated in this contract of separation ; and it is added, “ Therefore, it is hereby expressly declared and understood, that the foresaid contract of marriage, and whole stipulations and obligations *hinc inde* above written, and others therein contained, are reserved, and shall be considered as in nowise altered or infringed by the voluntary separation aforesaid, but shall stand in full force and effect, in the same manner as if no such separation had taken place.”

Mrs. Lauder accordingly received payment of this provision during her husband’s life, and at each term granted receipts, discharging her half-year’s allowance until the term following. In the month of January 1799, Lauder died, and his widow brought an action against his executors for aliment until the following term of Whitsunday, when her provisions by the contract of marriage became payable, and for the expense of mournings.

The Lord Ordinary sustained the claim for mournings, in which judgment the executors acquiesced ; and with respect to the other conclusion, for aliment until the subsequent term, reported the cause. The pursuer

Pleaded : When the provision settled upon a wife by her contract of marriage does not become payable till the first term after her husband’s death, she is by law entitled to an aliment from his heirs or executors ; Ersk. B. I. T. 6. § 41. ; and this claim is equally competent, whether she continues to reside in the family of her husband or not ; 1st February 1662, Coupar against Laird of Tofts, No. 117. p. 5908. 15th January 1709, Lady Ormiston against Hamilton, No. 118. p. 5912. Nor is the amount of a separate aliment, granted during the husband’s life, to regulate this aliment after his death ; Boswell against Boswell, November 18, 1737, No. 121. p. 5916. Accordingly, it has been found, that a wife who had lived in a state of separation from her husband, and who had received payment of the half of her separate aliment at the term immediately preceding his death, was nevertheless entitled to a farther sum until her provisions as a widow became payable ; Countess Dowager of Caithness against Countess and Earl of Fife ; February 3, 1767, No. 69. p. 431.

No. 7. Answered: An alimentary provision must be regulated by the situation of the party for whom it is provided. To ascertain its amount in the present case, no better rule can be obtained, than referring by the sum which had been agreed on between the parties in their contract of separation as an adequate provision. The pursuer had obtained a half-yearly payment upon this account at the term of Martinmas preceding her husband's death, and had granted a discharge until the following term, which showed that these half-yearly payments were made at the beginning of each term. She did not live in the family of her husband, and had no occasion to keep up his establishment, so that there does not appear to be any foundation for an additional claim against his executors. So far as the cases quoted by the pursuer authorise in general a widow's claim of aliment, they are not disputed; for in this case that claim has been already discharged: And with respect to the case, Countess Dowager of Caithness against Countess and Earl of Fife, February 3, 1767, No. 69. p. 431. the aliment was not paid by advance, but after the lapse of each term, and it endured "during their living separate by mutual consent;" while in this case the pursuer's aliment is expressly declared to continue "until the conventional annuity provided to her by her marriage-contract shall open and fall due," which shows that the separate aliment was to be the amount of her provision until the first term of the payment of her jointure.

The Court sustained the defences; and it seemed to be the general opinion, that the special provisions of this deed of separation precluded the operation of the general rules of law with respect to the aliment of a widow.

Lord Ordinary, *Hermand.*
Alt. *Scott.*

Act. *Monypenny*
Agent, *W. Riddell, W. S.*

Agent. *J. Campbell, Atus, W. S.*
Clerk, *Menzies.*

J.

Fac. Coll. No. 103. p. 229.

1806. July 3.

DE COURCY against AGNEW.

No. 8.

The proprietor of an entailed estate is bound to maintain the widow of his son, who is the mother of his heir.

The only son of Sir Stair Agnew of Lochnaw, Baronet, was married, in 1792, to the Honourable Martha De Courcy, daughter of Lord Kinsale. At this time he was a Lieutenant in the army. He died a few months after his marriage, and his wife was delivered of a posthumous son. Upon this occasion, Sir Stair offered to maintain his grandson, provided he resided in Scotland; but this offer was declined, and Mrs. Agnew and her child continued to live with Lord Kinsale in Ireland for twelve years.

In 1805, an action was raised at the instance of Mrs. Agnew and her son, against her father-in-law for an aliment. The Lords (8th June 1805) found the defender liable in a suitable aliment to his grandson for bygone years, and