Monday, February 15.

OUTER HOUSE.

[Lord Kincairney.

REID *v.* REID.

Parent and Child—Aliment—Father-in-law—Daughter-in-law.

Held (*per* Lord Kincairney) that a father-in-law is not liable to aliment his daughter-in-law.

Process—Discussion—All Parties not Called—Action for Aliment.

Opinion (*per* Lord Kincairney) that in an action for aliment directed against a person alleged to be subsidiarily liable, and in which it is averred that the persons primarily liable have no means, it is not necessary for the pursuer to call or obtain decree against these persons.

The facts of the case are fully stated in the opinion of the Lord Ordinary.

On 15th February 1897 the Lord Ordinary pronounced the following interlocutor:—"Finds that the defender John Reid is not liable to aliment the pursuer, his daughter-in-law: Therefore assoilzies him from the conclusions for such aliment."

Opinion.—"In this case a very general question is raised which has not recently come up for express decision, as to which the earlier decisions are inconsistent, and the dicta of institutional writers are unsatisfactory, viz., whether a man is liable to support the wife of his son who has deserted her.

"The averments of the pursuer are that she and Thomas Reid were married in 1889, that a child was born in January 1891, that Thomas Reid deserted her in May 1891, that both her husband and her father are in indigent circumstances and unable to support her, that her husband lives with his father, the defender, who advised his son to desert her and aided him in doing so, and that the defender has an income of £1000 a-year.

"The action is directed against the pursuer's father and against her husband for his interest. But there are no conclusions against him. The pursuer's father is not called. The conclusions are for aliment for the pursuer's child and for herself.

"There is no plea that all parties are not called, nor is there any plea that the pursuer is bound to discuss both her husband and her own father or either before suing her husband's father, although these points were noticed in the argument. There are pleas to the effect that the defender cannot be made liable because both pursuer's husband and her father are able to support her and her child. Probably these pleas were sound enough except so far as it is pleaded that the child's maternal grandfather is liable to aliment the child in priority to the child's paternal grandfather—a proposition for which I know of no authority. But these pleas are not pleas to exclude the action, and might receive full effect after a proof.

"The pursuer seeks to displace them by averring that her husband and father are unable to support her. If that be true, there is no claim against her father at all, for there is no obligation for aliment *jure naturæ* where there is no superfluity. If the pursuer shall prove the inability of her husband to support her, then she may have a claim against the defender for aliment to the child, but if she does not prove the indigence of her husband then the claim against the defender must fail.

"The defender argued that the action was obnoxious to the plea that all parties were not called, founding on the case of *Neilson* v. *Wilson*, March 12, 1890, 17 R. 608, where it was decided by four judges against three that an action founded on joint and several liability constituted by verbal contract could not proceed unless all of the joint-obligants were sued. But I think that alimentary obligations can never be joint and several, because the obligation in each case is founded on its own special circumstances. I am not prepared to hold that the pursuer is bound to sue parties against whom she has no claim if her averments are true, and from whom she could not recover. But it is probably enough that there is no plea that all parties were not called.

"Holding that no plea is stated by which the action is barred, I must consider it on its merits. I think it better to say nothing about the claim for aliment for the child, because I do not remember that that point was so much as adverted to in the argument, and I should desire to know before deciding as to this part of the pursuer's claim what the defender has to say against it.

"The interesting question to which the debate was confined was whether the defender is liable on the circumstances averred to aliment his son's wife. I consider that question to be one of great difficulty. On the one hand I have been unable to find any sound principle on which the claim can be founded, and on the other hand, there is a certain balance of authority in favour of it, but not so great as to justify me in affirming it against considerations of principle. I have ultimately come to think that the questions should be answered in the negative.

"Decisions of early date and opinions have fluctuated both about this and the kindred question, whether a man is bound to aliment his son's widow. But that latter question has now been conclusively determined, and it is needless to refer to any of the cases except the last—*Hoseason* v. *Hoseason*, October 21, 1870, 9 Macph. 37—in which it was decided that no such obligation exists. It may not, however, necessarily follow that a man is not liable to aliment his son's wife if deserted, which is the question now raised.

"I have been unable to discover any principle on which the claim of the pursuer can be rested. Questions between husband and wife in regard to aliment form a class by themselves, and depend on the legal principles which depend on that relation.

Apart from the relation of husband and wife, claims and obligations for aliment exist between ascendants and descendants, and I am disposed to think between them only, exceptional instances of such obligation being merely applications of that general case, as explained by the Lord President in *Hoseason* v. *Hoseason*. Such claims arise (first) *ex debito naturali*, and (secondly) from that principle of reciprocity which in most cases, although not in all, characterises the law of alimentary obligation. A father is liable to aliment his son because he has brought him into the world and has thereby incurred various obligations towards him, and among others this obligation for aliment. The obligation has been extended to the son's issue. Again, on the principle of reciprocity a child is held liable to support a parent, and that obligation is in like manner extended to grandparents. The question in each case is whether there exists between the pursuer and defender a relationship out of which reciprocal claims and obligations for aliment can arise. That expresses the general principle and the ordinary case.

"Can that general principle be applied in this case? I think not. A father-in-law and daughter-in-law do not stand in the relation of ascendant and descendant, and I cannot see that there is any natural relation at all between these two out of which *ex debito naturali* reciprocal claims and obligations for aliment can arise.

"No doubt a husband is bound to aliment his wife; that is his obligation and his debt. But a father is not liable for his son's debts nor for any obligation which he may choose to incur or which may be incident to his position.

"If a wife lives with her husband, that circumstance may affect her husband's claim, and she may benefit from that claim. The husband's obligation to support his wife may perhaps reduce him to such penury as to entitle him to claim aliment from his father, or it may be taken into account in considering the amount of aliment to be awarded. But these questions relate to the claims of a son for aliment, and not to the claims of his wife, and here the son is not claiming aliment from his father, and is in point of fact being alimented by him. I do not suggest that reception of a son without his wife into his father's house would fulfil the father's obligation for aliment. Something very like that was decided in *Wallace* v. *Goldie*, July 20, 1848, 10 D. 1510. But I think that case was exceedingly special. Here there is no claim of aliment for the son, and it is only in such a claim that the question of the maintenance of his wife as one of the family can come in.

"It has been suggested that a father-in-law is liable to aliment his daughter-in-law, because she becomes his daughter by the connection of affinity. That is the reason given by Voet, who holds that a father-in-law is liable to aliment his daughter-in-law, and likewise apparently holds that a daughter-in-law would on the principle of reciprocity be liable to aliment her husband's father. The passage is so much in point that it may be well to quote it—'Generum certe et nurum inopem a socero ali oportere quia tales per affinitatem liberorum loco sunt, non improbabilite asserueris, ut vice versa socerum aut socrum a genero ali debere—Voet ad Pandectas, 25, 3, 10.' It is, however, unsafe to apply the principles of civil law to questions of that sort about domestic relations, and, besides, I cannot see how this principle can possibly stand with the judgment in *Hoseason* v. *Hoseason*, for the principle would extend the liability to the case of the son's widow, which the case of *Hoseason* negatives.

"Setting aside that principle, I do not perceive any other principle on which the liability now in question can be rested. Indeed, I think that in principle the judgment in *Hoseason* reaches this case, for I do not see why the liability of a father-in-law should depend on whether his son is dead or merely in desertion.

"But it is said that the authorities in favour of the pursuer's case preponderate, and I agree that the direct authorities do. There have been two cases in which the liability of a father-in-law to aliment his son's wife has been affirmed, and it is not unimportant to notice that in both of them the claim of aliment for the daughter-in-law after she had become a widow was rejected. The first of these cases is *Adam* v. *Lauder*, reported March 1, 1762, M. 398, July 11, 1764, M. 400, and June 14, 1765, M. 15,419, and the other is *Duncan* v. *Hill*, February 28, 1809, F.C., and February 17, 1810, F.C. The details of the case of *Adam* v. *Lauder* are given in the last of the reports quoted, and it would rather appear that the liability of the defender was rested on the fact that the son was an heir of entail under the Statute 1491, c. 25. It was doubted in the subsequent case of *Chrystie* v. *M'Millan*, July 6, 1802, M. App., Aliment No. 5, and is not, it is thought, a decision of great authority. The case of *Duncan* v. *Hill* is of more importance, and I think that the case of the pursuer ultimately rests on it. It is described by Lord Fraser as a somewhat special case—Fraser, Husband and Wife, p. 863. I do not see, however, much specialty in the case except this, that it was a judgment for arrears of aliment, and therefore not a judgment which would be repeated now—See Fraser, Husband and Wife, 862. But in the report of *Duncan* v. *Hill* there occurs the very important statement that the Lords concurred in the opinion of the Lord President 'that by the law of nature and of the courts, a father having sufficient means was bound to aliment his son in case of necessity; that our decisions have also subjected him to the obligation of alimenting the wife of his son during his son's life and incapacity to maintain her.' None of the decisions here referred to have come down to us except *Adam* v. *Lauder*.

"On the other hand, in *Belch* v. *Belch*, December 1, 1798, Hume's Dec., p. 1, a claim for aliment for the wife of a husband who had deserted her was disallowed, but a claim for the children was allowed. The

case is in point, but the report gives no details. In *Christie* v. *M'Millan, supra*, and also in *Brown* v. *Brown*, July 10, 1824, 3 S. 247, the claim of a son's wife was disallowed, but these two decisions seem of little consequence in this case, as they were plainly founded on specialties. The case of *Fea* v. *Traill*, February 8, 1710, Forbes' Dec. 395, stands in a peculiar position, being partly in favour of the one party and partly of the other. It was there held 'that albeit a father is not bound to aliment his son's wife separately from her husband, yet it is relevant to make John Traill liable by way of damages to aliment the pursuer, and in a letter to his son he threatened to disown him if he owned her.'

"This case seems to be for the defender on the general question, but it suggests that on the specialty there might be a claim of damage. I do not say whether in this case there might or not be a claim of damage on that same specialty, but I am unable to regard the present action as an action of damages.

"There is no subsequent decision as to the obligation to aliment a wife until we come to *Hoseason* v. *Hoseason*. That case, as already noticed, related to the aliment of a son's widow. In his note Lord Gifford refers to the decision in *Duncan* v. *Hill*, but expresses neither assent nor dissent. But the Lord President made an observation which seems of consequence. 'The obligation,' his Lordship says, 'is a natural and equitable obligation issuing from the close relation subsisting between the parties, and in the ordinary case it is undoubtedly reciprocal. Nor do I see any reason why it should not be so as between a father and his son's wife, if, as the pursuer contends, it exists between persons in that position at all. But, my Lords, that would inevitably lead to the recognition of liability for aliment in a class of cases and in circumstances where it has hitherto been unknown.' It will be observed that his Lordship speaks, and I must suppose advertently, of a son's wife and not of a son's widow, and he clearly indicated a doubt, or more than a doubt, whether the relation of father-in-law and daughter-in-law was such as to give rise to claims and obligations for aliment.

"This leads to the question whether a reciprocal obligation of a daughter-in-law to aliment a father-in-law exists in our law. Voet in the passage quoted seems disposed to allow it; but I think that our law would reject it. In the case of *Moir* v. *Reid*, July 13, 1866, 4 Macph. 1060, and *Foulis* v. *Fairbairn*, July 20, 1887, 14 R. 1088, it was held that a husband was liable to aliment his wife's parents. But the ground of judgment was not that there subsisted between him and them such a relation as gave rise to reciprocal claims of aliment, but only that he was liable for the debts of his wife. This appears from the case of *M'Allan* v. *Alexander*, July 7, 1888, 15 R. 863, in which a man, married after the date of the Married Woman's Property Act 1877, and not *lucratus* by the marriage, and so not liable for his wife's debts, was held not liable to aliment his wife's mother, and, of course, for the same reason he would have been held not liable to aliment his wife's father. That was a decision that there does not exist between a man and his wife's mother (or father), or which is the same thing expressed otherwise, between a man and his daughter's husband, such a relation as would give rise to exceptional claims or obligations for aliment. It is a very short step from that to the present case, which is as to the obligation of a man to aliment his son's wife. I consider that these cases and the decision in the case of *Hoseason*, and also the *dictum* of the Lord President in that case, detract from the authority of *Duncan* v. *Hill*.

"There is not a great deal of assistance to be got from our institutional writers. I am informed that in Baron Hume's Lectures it is laid down that a father-in-law will be liable to aliment his son's deserted wife but not his son's widow. In the copy of Baron Hume's Lectures to which I have had access it appears 'that he rested this opinion on the cases of *Adam* v. *Lauder* and *Duncan* v. *Hill*. I am also informed that Baron Hume states that *Belch* v. *Belch* was decided against the deserted wife on the ground that the husband would not have had a claim for aliment. Erskine himself says nothing on the subject, but Lord Ivory in a note quotes without question the case of *Duncan* v. *Hill* as deciding this point in favour of the deserted wife. I observe that Professor More states that the point is open and debateable (Notes on Stair xxx.). In Bell's Principles, sec. 1633, it is laid down that one is not bound to aliment the wife of his son. But yet at sec. 1630 he says that the obligation for maintenance 'extends to the son's wife in the higher ranks during the son's life.' Lord Fraser, at p. 863 of Husband and Wife, says that 'when a husband is unable to aliment his wife, or deserts her, she has no claim against his father.' But in the passage in his work on Parent and Child, what seems to be the opposite opinion is expressed in regard to the obligation of a husband's father 'in opulent circumstances' to support his son's widow, which appears contrary to the case of *Hoseason*.

"I have already noticed the *dictum* of Voet.

"From a consideration of all these authorities, where, not only does one authority conflict with another, but Lord Fraser and Professor Bell seem to conflict with themselves, I think the conclusion is allowable that this question is not settled by authority, and that it is open to be decided, and therefore must be decided on principle; and, on the grounds stated, I am of opinion that this claim is not well-founded on legal principle.

"I shall therefore assoilzie the defender from the conclusions for payment of aliment to the pursuer, and will hear what parties have to say about the claim for the aliment of the child."

Counsel for the Pursuer—Kennedy—W.

Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Defender—A. S. D. Thomson. Agent—John Veitch, Solicitor.

VALUATION APPEAL COURT.

Wednesday, February 17.

(Before Lord Kyllachy and Lord Stormonth Darling.)

M'LACHLAN *v.* ASSESSOR FOR AYR.

Valuation Cases — Rent Conditioned as Fair Annual Value — Tenant a Company of which Landlord a Partner — Valuation of Lands (Scotland) Act 1854 (17 *and* 18 *Vict. c.* 91), *sec.* 6.

By section 6 of the Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. c. 91) it is provided, *inter alia*, that where "lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands or heritages in terms of this Act."

Held that in fixing the valuation of a hotel which was let at a yearly rent to a firm of three partners, the fact that the landlord was a partner in the firm, and that the rent was, in the opinion of the Valuation Committee, inadequate, did not entitle the Committee to disregard the rent fixed in the lease.

By lease dated 18th March 1896 James M'Lachlan, builder, Ayr, proprietor of the Hotel Dalblair, 42 Alloway Street, Ayr, let the said hotel to himself, Hugh Buchanan, Berkhall, Bellahouston, and John Hay O'Beirne, solicitor, Ayr, as trustees on behalf of a company or firm known as the Hotel Dablair Company, Ayr, for five years at the yearly rent of £100. The firm in question consisted of M'Lachlan, Buchanan, and O'Beirne, under a contract of copartnership between them dated 6th March 1896. The subjects let were entered in the valuation roll by the Assessor as follows:—

No.	Description of Subject.	Proprietor.	Occupier.	Yearly Rent or Value.
241	House (Gatehouse), 39 Dalblair Road.	James M'Lachlan, builder, per J. H. O'Beirne, Newmarket Street.	Empty.	£10 0 0
2	Greenhouses and Garden	Do.	Self.	10 0 0
658	Hotel, 42 Alloway Street.	Do.	Hugh Buchanan and Company.	200 0 0

M'Lachlan appealed to the Magistrates and Town Council of Ayr at a meeting for the purpose of hearing appeals against valuations made by the Assessor, and craved that the valuation be reduced to £100.

The following facts were elicited in evidence — "In the spring of 1895 Mr M'Lachlan had let the subjects then known as Dalblair House for the purpose of a hotel to John Campbell, confectioner, Ayr, at a rent of £150 per annum, provided a licence could be obtained from the magistrates. This arrangement fell through in consequence of the magistrates refusing to license the premises. In autumn of last year Mr M'Lachlan applied for and obtained a hotel licence from the magistrates in his own favour. In May of the present year Mr M'Lachlan, in making the return required by the Valuation Acts, returned himself as proprietor and Hugh Buchanan and others as tenants. The copartnership was arranged in March, but the licence was allowed to remain in Mr M'Lachlan's name. During the eight or nine months that elapsed between the granting of the licence and the opening of the hotel extensive alterations and improvements were made, and additional accommodation was erected, so as to meet the requirements of a first-class hotel trade. These alterations, improvements, and additions were made at the expense of Mr M'Lachlan as proprietor, but he could not say what they cost. Mr John Hay O'Beirne is a son-in-law of Mr M'Lachlan." The Assessor "pointed out the great difference between the appellant's hotel and the two hotels situated within sixty yards of it on either side, which are entered in the valuation roll at £100 and £110 respectively, and neither of which, although quadrupled, could compare with the appellants' hotel, either in size or completeness."

The Valuation Committee reduced the valuation of the hotel to £155, and dismissed the appeal as regards the other items.

M'Lachlan appealed, and argued—When there is a lease with a fixed rent, and it is not shown to be simulate, it rules the valuation. The mere fact that landlord and tenant are related was not a ground for disregarding the lease — *Alexander* v *Assessor for Kirkcudbright*, May 30, 1890, 17 R. 855. The hotel here was a new venture, and the rent was therefore quite properly low.

Argued for the Assessor—The fact that the rent was greatly below the adequate value, coupled with the relationship of the partner, was enough to entitle the Committee to disregard the lease. In an unreported case in 1895 — *Stevenson and Others*—a lease was held to be a family arrangement and disregarded.

LORD KYLLACHY — In this case the magistrates have disregarded the lease under which it is admitted that the premises are at present let. Now, I think that they can only do that upon one of two grounds. They may hold that the lease is not a *bona fide* lease, or they may hold that there are considerations passing between the parties other than the rent stipulated in the lease.

The question is, whether we have anything before us to justify a disregard of the lease upon either of these grounds. Now, I quite concede that where a lease