should not be liable to pay annualrent for a legacy intromitted with by him belonging to his son. No 108.

Gosford, MS. No 61. p. 22.

1669. *July* 13. EDWARD MAXWELL of Hills *against* BROWN of Inglistoun.

No 109.
Found in conformity to Winrahame against Elies, No 108. p. 11433.

MAXWELL of Kirkhouse having left a legacy of about 40,000 merks, to five daughters of Crichtoun of Crawfordstoun's, who uplifted the same; one of the daughter's being married to Alexander Trane, who did assign her part of the legacy to the said Maxwell of Hills, who did pursue Brown of Inglistoun as one of the heirs-portioners of Crawfordstoun, for payment of the principal sum, and annualrents since Crawfordstoun's intromission, as being administrator of law to his daughter; it was *alleged*, That Crawfordstoun the father had alimented his daughter, and expended great sums of money upon his daughter's marriage, and her cloaths and necessaries in order thereto, and that the legacies by the law bear no annualrent, and so ought to have compensation for the principal sum; to which it being *replied* that the father did bestow aliment *ex pietate paterna*, and was obliged to provide his daughter on marriage with all necessaries, and that as administrator he was liable in annualrent for the legacy uplifted by him, which was left by a stranger, the LORDS did sustain the defence to assoilzie from the annualrents, but decerned for the principal sum, as they had done before, in the case betwixt the second son of James Elies, and his Relict and Children against the Heir, No 108. p. 11433.; where they found, that parents alimenting and providing their children out of their own means, they nor their heirs were not liable for annualrents for legacies uplifted by them left to their children by strangers, they being in a different case from tutors and curators.

Fol. Dic. v. 2. p. 143. Gosford, MS. No 168. p. 66.

1672. *June* 13. LADY LUGTON *against* HEPBURNE and CRICHTON.

No 110.
In a process at the instance of a grandmother for aliment of her grandchild for 13 years; found that if a doubtful succession should be obtained, the grandmother should be reimbursed, if not, she should

A DECREET being recovered before the Commissaries of Edinburgh, at the instance of the Lady Lugton, against her grandchild Hepburne, daughter to the deceast Laird of Aderstoun, modifying 400 merks yearly, for aliment of the said Hepburne, by the space of 13 years since her birth; the LORDS in a reduction and suspension of the said decreet, modified the sum therein contained, being 3500 merks, to the tenth part of the sum of 30,000 merks, which was mentioned in the said decreet, and considered by the commissaries as the estate belonging to the said Hepburne, so that in respect and upon supposition of the same they modified the said aliment; and by reason the said estate was intricate and litigious, and possibly could not be

No 110. be held to have alimented *ex pietate.*

recovered, the Lords ordained the pursuer to assign the tenth part of the said estate, not exceeding 3000 merks, which was done upon that consideration, that the aliment was modified in respect of the said interest; and if *ex eventu* it should be found, that it could not be recovered, and that she had no estate, it were unjust that she should be liable personally, her grandmother being obliged at least presumed to entertain her *ex pietate materna*, if she had no estate of her own.

Clerk, *Monro.*

Fol. Dic. v. 2. *p.* 142. *Dirleton, No* 156. *p.* 67.

1673. *July* 25. Ker *against* Ruthven.

No 111.

The Lords found, That the estate of the Earl of Bramford being settled upon the Lord Forrester's son by act of Parliament, he could not have it but *cum sua causa*, and the burden of his debts.

Item, They found, That the Earl, having entertained his grandchild the pursuer, was to be presumed to have done it *ex pietate avita*, the Earl being a generous person, and having an opulent estate; and his grandchild having nothing for the time, but the debt in question, whereof the annualrent was provided and belonged to his brother.

Clerk, *Monro.*

Dirleton, No 177. *p.* 71.

1676. *June* 29. Row *against* Rows.

No 112. A mother having alimented an heir and two siters; the heir was found liable for his own aliment, but for that of his sisters he was found not liable, the mother having been presumed to have alimented them *ex pietate.*

Janet Row having alimented John, Elizabeth, and Christian Rows, from their father's death which was in September 1671 till now, pursues John Row for his own aliment, and for the aliment of his sisters, which were left infants, which the Lords have oftentimes sustained against their father's heir, having a competent estate. The defender *alleged*, Absolvitor, because the natural obligation of parents to aliment children is merely personal, and doth not burden any representing them. 2*do*, The defender's estate is very inconsiderable, not exceeding 300 merks by year. 3*tio*, The pursuer is their mother, and hath the same natural obligation as their father to aliment them, and having accordingly alimented them, they having no means of their own, it is presumed to have been done *ex pietate materna*, and she can seek no payment. It was *answered*, That the mother is not able to entertain them, having a mean provision within L. 100 Scots, and can only be obliged *quantum potest.*

The Lords assoilzied from the bygone aliment of the two sisters, being alimented by their mother, but sustained the aliment for the heir himself, and re-