

the sum, yet *nihil impediēbat* but he might, in a reduction and declarator, have annulled her right to the fee; and the decisions cited are only in the case of a positive prescription, and so are misapplied here. To the *second*, Latency is no defence against the long prescription of forty years; neither does law presume an heir to be ignorant of his father's debts, but on the contrary to know them. *Stio*, Barns's obligation in 1683 favours Lady Margaret as much as him; for, as it reserves his power of quarrelling, so all the lady's legal defences are as fully, and with the same breath, reserved; which makes it as broad as long.

The Lords thought her being liferenter did not make him *non valens agere* in this case; but found his proponing compensation against the Earl in that 10,000 merks' bond, with his reservation in 1683, &c. were sufficient interruptions; and therefore his action of reduction, *ex capite lecti*, was not prescribed.

*Vol. II. Page 167.*

1702. *December 23.* MARGARET WALLACE *against* WALLACE of CRAIGIE'S HEIRS of LINE and TAILYIE.

Mrs Margaret Wallace, daughter to Sir William Wallace of Craigie, by Nidderly's daughter, pursues an aliment against her father's Heirs of Line and Tailyie; and the modification being remitted to the Lords, they first considered her portion, which is £1000 sterling, and not to bear annualrent till her age of twelve; and then her age, that is, only about three or four; and so they modified 500 merks to her yearly, till her age of seven complete; and then 700 merks till her age of twelve. And it being craved that she might have a decret for this, against the factor of the estate of Craigie; but the creditors opposed, *CONTENDING*,—That the decret of aliment could only be the ground of an adjudication against her father's estate; and in the ranking of the creditors she may compear, but in all probability may be ranked behind most of them, so little reason there is to give her a present preference upon a personal bond not yet made real; though it may be contended she ought not to starve *medio tempore*; but her mother's jointure may allow her something of it.

The Lords declined to determine the preference *hoc loco*, or to grant warrant to the factor for making present payment, but left her to her course in law.

*Vol. II. Page 168.*

1702. *July 22 and December 29.* ELIZABETH CUNNINGHAM and JOHN MIDDLETON *against* CUNNINGHAM of ENTERKIN.

*July 22.*—ELIZABETH Cunningham, daughter to Enterkin, showing some purpose to marry one Mr John Middleton, son to Dr Middleton in Aberdeen; and her friends being dissatisfied with the match, she is prevailed with to grant an assignation to her brother of her bond of provision containing the sum of 10,000 merks, in case she shall marry the said Mr Middleton, reserving her the liferent of the said portion for an aliment. And the said Enterkin, her brother, by his