

(BY PACTIION.)

1736. *January 27.* HENRIETTA MONGRIEFF *against* FAIRHOLM of Pilton.

No 88.

A mother, in her contract of marriage with a second husband, took him bound to aliment her daughter. The Court modified a sum, and found an offer to aliment in family irrelevant.

A WIDOW who liferented her daughter's portion of 12,000 merks, entering into a second marriage, took an obligation in the contract from her future spouse, to educate and aliment her daughter suitably. In a process at the daughter's instance, after her majority, for a liquid sum in place of aliment :—THE LORDS decreed for 300 merks a-year, and found it not a sufficient implement of the obligation, that the defender offered to aliment her in his own house with her mother, as was done for bygone years.

*Fol. Dic. v. 1. p. 34.*1736. *February 13.* MARGARET FALCONER *against* CREDITORS.

No 89.
A paction to aliment, tho' constituted by contract of marriage, cannot compete with onerous debts of the father, who becomes bankrupt.

IN a contract of marriage, the husband became bound to pay to an only daughter, the sum of 6000 merks at her age of sixteen; and, in the mean time, to maintain her in bed, board, schools, cloaths, and all other necessaries. In a ranking of the man's creditors, wherein the daughter appeared with an adjudication upon this claim of aliment; it was *pleaded* for them, That this stipulation to aliment, is no more but exegetic of the natural obligation, and must cease when the father is no longer in a capacity to aliment himself.—THE LORDS found, That a paction to aliment, though constituted by a contract of marriage, cannot compete with the onerous debts of the father, he becoming bankrupt.

Fol. Dic. v. 1. p. 34.

The following case from Balfour is referred to in No 31.

1545. *March 13.* GEORGE Earl of HUNTLY, Supplicant.

No 90.
If the whole lands be held by a relict, in right of terce, liferent, or conjunct-fee, a proportional aliment will be modified to the heir.

GIF ony man deceifes, leivand behind him, his landis in the ladyis handis, be reffoun of tierce, liferent, or conjunct-fee, swa that his air has na part thairof to live and be sustenit upon, the Lordis havand respect and consideration of his necessity and indigence, may tax and modifie, at thair discretion, ane certane fowme, or part of the maillis and dewteis of the said ladyis tierce, liferent, or conjunct-fee landis, ilk ane efter the rate and quantitie of thair landis, to be upliftit, bruikit, and joisit zeirlic be the said air for his sustentation, quhidder he be minor or of perfeit age.

Balfour, (HEIRSHIP GOODS) p. 237.