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sustained, and that the said appellants be assoilzied from the suit.

For Appellants, *Rob. Dundas, Al. Forrester.*

For Respondents, *C. Yorke, Dav. Rae.*

Note.—As to the minority of substitutes in an entail being held not to interrupt prescription, see *Macdougall v. Macdougall*, 12th July 1739. The interlocutor in that case was, “that the minority of Thomas or of William Macdougall could not interrupt the prescription, they being only *substitutes* by the tailzie 1684.” M. 10947. Kames designates this case as the famous case, (K. De. p. 165), and it has been a leading case ever since. It was upon the principle of that case that judgment was reversed in the present case of *Ayton*. The House of Lords further considered the respondent barred, as having been himself major for more than forty years during possession on an adverse title. In the case of *Gordon v. Gordon*, 21st December 1784. *Fac. Coll.*, in giving judgment in a plea of the same nature, the Lord President (Dundas) observed that “he had heard the case of *Macdougall* judged and revered it. Lord President Forbes, and Lord Arniston, supported the decision. Its principles were afterwards adopted in the case of *Ayton* by Lord President Craigie, and Lord Justice Clerk (Erskine), who had been of counsel on the losing side in the case of *Macdougall*; and in the House of Lords the judgment was approved of by Lord Chancellor Hardwicke and Lord Mansfield.” This question underwent a more thorough investigation in a subsequent case which was twice before the House of Lords.

Vide *Sir Hew Dalrymple v. Fullarton*, House of Lords, 18th Dec. 1797; and *infra*.

ALEXANDER, EARL of CAITHNESS, - *Appellant.*
 MARGARET, COUNTESS OF CAITHNESS, *Respondent.*

House of Lords, 18th May 1757.

ALIMENT.—A wife agreed to accept of a separate aliment from her

husband. Held on her insisting that the sum was inadequate, that she was not barred by the agreement from insisting and claiming more; and L.200 per annum, and the interest of her own proper free funds allowed, although this was above the sum provided to her by her ante-nuptial contract of marriage.

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THE appellant was married to the respondent; and by marriage articles entered into, of this date, she was provided, in case she should survive her husband, with an annuity of L.222, 4s. 5d. per annum; this annuity being restricted to L.166, 13s. 4d. in the event of there being one or more children of the marriage. March 1738.

In 1739 the respondent bore the appellant a daughter. She alleged that about this time he absented himself from her society, and began to slight her. When on the point of lying-in at Edinburgh, he thought fit to retire to Caithness; and when she followed him there to endeavour to reconcile him, he removed to England; and also inhibited her.

To save litigation and exposure of family affairs, she accepted, by agreement entered into between them, of this date, of L.83, 6s. 8d. for her aliment during the time they by mutual consent continued to live separate; but finding it impossible to subsist on this small sum, she raised the present action for L.300 per annum, as a suitable aliment, to endure so long as the Earl persisted in living separate. In defence, the appellant pleaded the agreement and contract of separation entered into, contending that the aliment therein allowed was ample, and, in the circumstances, sufficient to sustain her. June 1741.

After an enquiry into the rental of the appellant's estate, the Lords of Session unanimously found " the pursuer (respondent) entitled to an additional aliment over and above the aliment contained in the 24th Feb. 1756.

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“ contract mentioned in the libel, and modified the ad-
 “ ditional aliment to the sum of L.116, 13s. 4d. sterl-
 “ ing, which, with the sum of L.83, 6s. 8d. sterling,
 “ contained in the said contract, makes in whole the
 “ sum of L.200 sterling. And likewise find the pur-
 “ suer entitled to the interest of her own proper free
 “ funds by way of aliment; also to be payable to her
 “ from time to time as the same should be settled,
 “ and liquidated, and that over and above the fore-
 “ said sum of L.200 of aliment, modified as above,
 “ the same to be payable half-yearly at Martinmas
 “ and Whitsunday in all time coming, during the
 “ pursuer and defender living separate.”

Against this interlocutor the present appeal was brought.

Pleaded for the Appellant:—The Court have proceeded here to award an aliment without due regard to the particular circumstances of the appellant's estate, or to the legal rights of parties previously settled in that particular. They have looked to the rental of the estate without taking into view the encumbrances with which it is burdened; and it was with a special view to this state of circumstances, and, in particular, the fact, that the L.2000 of this debt was a sum contracted by the Countess before her marriage, that the aliment of L.83 was agreed on; and having so agreed, she was now barred in law from claiming a higher aliment. But even supposing she was not barred by this agreement, and it were still open to her to claim a higher alimony, there is no instance in the law of Scotland where an aliment has been awarded larger in amount than the jointure granted to the wife by the marriage articles. In the present instance the Court has awarded L.33, 6s. 8d. more than her jointure.

Pleaded for the Respondent:—The contract by which she agreed to accept of an allowance of L.83, was signed by her under peculiar circumstances. She was mainly induced to it under the force of necessity, and merely for the sake of peace, and to prevent exposure of family affairs. But finding it utterly inadequate to subsist her, she was obliged to take her course in law, to have a more suitable aliment awarded. The contract cannot bar this recourse, because, in so far as it provides insufficient aliment, it is not binding on her. And looking to the respondent's birth and rank, and to the appellant's income of L.1100 per annum from his estate, the sum allowed by the Court ought to be confirmed, with costs.

After hearing counsel, it was

Ordered and adjudged, that the interlocutor complained of be affirmed.

For Appellant, *C. Yorke, Cha. Hamilton Gordon.*

For Respondent, *Al. Forrester, Dav. Rae.*

Note.—Unreported in Court of Session.

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