Upon the whole then, I am of opinion that this judgment ought to be reversed; and that the Appellant ought to be assoilzied, also from the costs of the action below. He cannot have his costs here.

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SECURITY.—NOTICE, &c.

Judgment of the Court below REVERSED: and the Appellant assoilzied accordingly.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

WOOLLEY and another—*Appellants.*
MAIDMENT—*Respondent.*

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ACTION for aliment by a son against his mother. The mother had been a ward of Chancery, and having, when fifteen years of age, married Maidment, the Respondent's father, a settlement of her property real and personal was then made, under the direction of the court, by which the interest of the personal estate was made payable to her for life, and the principal to her children, in equal shares at her death; but their interests to be vested, as to sons, at the age of twenty-one, and, as to daughters, at the age of eighteen, or on their marriage. As to the freehold, copyhold, and leasehold estates, they were to be sold, and the money to be invested in purchase of freehold and copyhold estates, of which the mother was made tenant for life, with remainder to her first and other sons in tail, &c. The Pursuer was the first son. The father died. The mother advanced 100*l.* as a fee, to a clerk to the signet, into whose office the son entered with a view to the profession of an advocate, the mother then residing in Scotland. The mother married again, and refusing to allow her son a certain annual sum for his maintenance, he brought the action for aliment, being then past the age of twenty-one, and the claim to

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aliment *sustained*, *super jure naturæ*, in the court below. But the judgment *reversed* in the House of Lords. The Lord Chancellor being of opinion that the interests of the respective parties were settled by the English settlement which could not be undone, and being of opinion that as the son had a vested interest in the property with which he might deal in the market, he had sufficient aliment without aid from his mother.

JANE WOOLLEY, the Appellant, being in 1791 entitled to considerable real and personal property, under the marriage settlement and will of her grandfather Robert Barnvelt, merchant in London, and being then only 15 years of age, and a ward of Chancery, was in that year married to Mr. Maidment, the Respondent's father; and on that occasion, under the directions of the Court of Chancery, marriage articles were executed between the Respondent's father and the Appellant. They commence with a recital that his mother, the Appellant, was entitled to a third share of certain heritable estates that had been settled on her and her two brothers, by her grandfather, in the year 1767; and also that her grandfather by his will of 1785, had vested certain other heritable estates, and certain sums of money for behoof of the Appellant's mother; and after that person's death, for behoof of the Appellant and her other children, when they should attain the age of twenty-one, till which time it was to be accumulated by trustees; and then it is declared that in contemplation of the marriage, the parties "covenanted, provided, and "agreed to assign, transfer and set over, settle and

Marriage articles, May 16, 1791.

" assure, or cause to be assigned, transferred and " set over, settled and assured, all the part, share " and interest of the said Jane Anne Woolley, " whether present or future, vested or contingent, " of and in the before-mentioned sums of 4,403*l.* " 16*s.* 4*d.* 3 *per cent.* Reduced Bank Annuities; " 3,000*l.* 4 *per cent.* Bank Annuities; and 8,000*l.* " 3 *per cent.* Consolidated Bank Annuities, and all " the past share and interest present and to come, " which the said James Maidment and Jane Anne " Woolley, his intended wife, or the said James " Maidment in her right, will immediately, upon " the solemnization of the said intended marriage " become entitled to, and in and to the produce and " accumulations thereof, unto Jacob Caseneuve " Troy of Chatham, in the county of Kent, " banker; Thomas Lomas of same place, gentle- " man;" (both since deceased,) " Richard Burton " of Craven-street in the Strand, in the county of " Middlesex, Esquire; and Richard Withy the " younger, of the same place, Esquire; their ex- " ecutors, administrators, and assigns, upon the " trusts, and to and for the intents and purposes " herein after-mentioned, expressed and declared " of and concerning the same." The deed next proceeds to provide, that the moneys and estate shall be kept under trust, till Mrs. Maidment shall have attained the age of majority, when she and her husband became bound to those trustees, " by such " good and sufficient fines, recoveries, conveyances, " assignments, and assurances in the law, as they " the trustees, their heirs, executors, administrators " and assigns, or any of them, their, or any of

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" their counsel learned in the law, shall advise or " approve of, upon the trusts, and to and for the " ends, intents, and purposes, and under and sub- " ject to the powers, provisions, declarations and " agreements herein after-mentioned, expressed and " declared, or directed of and concerning the same." The purposes of the trust are then declared to be, in the *first* place, to vest the whole property that may belong to the wife, either presently or eventually, in government stock, or securities, in the county of Middlesex, in the name of the trustees, who are authorised to pay the interest and other annual proceeds " into the proper hands of the said " Jane Anne Woolley *only*, and not into the hands " of any other person or persons, to whom, or in " whose favour she may assign, alien, charge, or " encumber the same, to the intent that the same " may be for the sole and separate use of the said " Jane Anne Woolley, and may not be subject to " the debts, control, disposition, or engagements of " the said James Maidment, her said intended hus- " band, and for which the receipt of the said Jane " Anne Woolley, and her receipt only, under her " own proper hand-writing, shall be from time to " time a sufficient discharge to the person or per- " sons paying the same, for so much thereof for " which such receipts shall be given." Next follow the instructions of the parties, as to the application of the principal sums, after the death of the life-rentrix, in these terms: " and from and after the " decease of the said Jane Anne Woolley, in trust " for all and every the child and children of the said " intended marriage, subject to the proviso herein-

" after last mentioned and contained, equally, share
" and share alike, the shares of sons to be interests
" vested in them at their respective ages of twenty-
" one years, and of daughters at their respective
" ages of eighteen years, or days of marriage, which
" shall first happen, and to be paid, assigned and
" transferred, at such respective days or times, if
" the same shall happen after the death of the said
" Jane Anne Woolley, but if before, then immne-
" diately after her death; provided always, that if
" any such children shall die before his or their
" portion shall become vested as aforesaid, then and
" in such case, the part or share, parts or shares of
" her, him, or them so dying, shall go to the sur-
" vivor or survivors, and others of them equally be-
" tween or among them (if more than one), share
" and share alike; and the same shall become vested
" interests (if more than one), share and share alike,
" and be paid and payable at the respective days
" and times, and shall go in the same manner as is
" thereby provided and declared, touching his, her,
" or their original portion or portions, and such
" condition or benefit or survivorship of accruer
" shall extend as well to the surviving or accruing,
" as to the original shares. That as to the right
" and interest of the said Jane Anne Woolley of
" and in the said freehold, copyhold, and leasehold
" estates, they shall hold them in trust, to sell and
" dispose of the same, either entirely or in parcels,
" to any person or persons who shall be willing to
" become the purchaser or purchasers thereof, for
" the best price or prices that can or may be reason-
" ably had or gotten for the same; and to lay out

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" and invest the money arising from such sale, in " the purchase of such freehold or copyhold mes- " suages, lands or tenements of inheritance, to be " situated in some part of England, as the said " James Maidment and Jane Anne Woolley, during " their joint lives, and the survivor of them, shall " by note or writing under their or his or her hands " or hand, testified by two credible witnesses, direct " and appoint, and to settle, convey, and assure the " messuages, lands, and hereditaments so to be pur- " chased, to the uses, upon the trusts, and to and " for the intents and purposes, and under and sub- " ject to the powers, provisions, declarations, and " agreements herein-after mentioned, expressed, and " declared, of and concerning the same; that is to " say, to the use of the said James Maidment and " his assigns, for and during the term of his natural " life, without impeachment of waste, with remain- " der to trustees to preserve contingent remainders, " with remainder to the said Jane Anne Woolley, " during the term of her natural life; WITH REMAIN- " DER to the use of *the first son* of the body of the " said James Maidment, or the body of the said " Jane Anne Woolley, lawfully to be begotten, and " the heirs of the body of such first son." And it is further " agreed and declared, that in the mean " time, until the said freehold, leasehold, and copy- " hold estates shall be sold and disposed of, in pur- " suance of the trust herein-before contained, *the* " *rents and profits* of the same freehold, copyhold, " and leasehold estates shall be received by the same " persons as would be entitled to the rents and " profits of the freehold and copyhold estates

" herein-before directed to be purchased, in case
" the same was actually purchased and settled
" pursuant to the trust herein-before contained;
" and it is hereby also declared and agreed, that
" in the mean time, from and after such sale or
" sales of the said freehold, copyhold, and lease-
" hold estates, hereby directed to be made as-
" aforesaid, and until the money to be produced
" from such sale or sales shall be laid out and in-
" vested in such purchase or purchases as herein-be-
" fore directed, the same shall be laid out and in-
" vested in or upon government, or real securities,
" at interest in the said county of Middlesex, in the
" names of the said Jacob Caseneuve Troy, Thomas
" Lomas, Richard Burton, and Robert Withey, and
" the interest to be produced therefrom, to be paid
" and applied to the same persons, and in the same
" proportion and manner as the rents and profits of
" the freehold and copyhold estates, so to be pur-
" chased as aforesaid, would be payable or applicable
" to, in case the same were actually purchased and
" settled pursuant to the trust herein-before con-
" tained." It is therefore declared, " that it shall
" and may be lawful to and for the said trustees, for
" the time being, by the direction of the said Jane
" Anne Woolley in her life-time, signed by writing
" under her hand, attested by two credible witnesses,
" and for them after her decease, if they shall think
" fit to sell and dispose of, and apply a reasonable
" part of the moneys, stocks, funds, and securities
" hereby provided for the portion or portions of any
" such child or children, being a son or sons, not
" exceeding the sum of two hundred pounds sterling,

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" for placing out such son or sons, in any profession, " business, employment, or for his or their portions, " which shall not have become vested or payable."

The marriage contemplated in these articles was solemnized: and Mr. Maidment, the Respondent's father, in obedience to an order from the Court of Chancery, executed an endorsement on them, by which, on the 22d July, 1793, " he assigned, " transferred, and set over to the before-named " Jacob Caseneuve Troy, Thomas Lomas, Richard " Burton, and Robert Withey, and the survivors " and survivor of them, and the executors, admini- " strators, and assigns of such survivor, all the right, " share, and interest, which I, the said James Maid- " ment, have, in the several respective funds, whe- " ther vested or contingent, and mentioned in the " within indenture, to, for, and upon the several " respective trusts, intents, and purposes in the said " indenture particularly mentioned, expressed and " contained."

James Maidment the father had no property when he married, and the family was maintained out of the mother's property the subject of the above settlement, by which her interest in the property was made only a life interest, when she would, otherwise, have had the whole, which by the settlement or articles was given, upon her decease, to her children. James Maidment, the Respondent, was the eldest son of the marriage. The father died in 1804, and in 1814 the mother, residing in Scotland, married Captain Landers. A short time before this the Respondent went into the office of a clerk to the signet, to acquire a knowledge of the

practical part of business, with a view to the profession of an advocate; and his mother advanced 100*l.* to the signet clerk on that occasion. The son asserted that the mother had advised this step, which she denied. After her marriage with Captain Landers, he applied to her for a fixed settlement, or an undertaking to pay him, out of her life interest, a certain annual sum for his maintenance and education. The mother professed that she had maintained him in her house, and made him occasional advances, which she was willing to continue to the extent of her ability, but refused to comply with the above request. The son, in 1815, being then of the age of majority, brought an action in the Court of Session against his mother for aliment, stating in his summons two distinct grounds; 1st, that aliment is due from a mother to her child *super jure naturæ*; 2dly, that as life-rentrix of the property, she was bound to aliment the fiar. A third ground, suggested from the Bench, was afterwards insisted upon, that the mother, by engaging her son in a profession, by which he could not support himself, came under a *quasi* obligation to aliment and support him. The summons concluded, "That "the said Mrs. Jane Anne Woolley, alias Maid-"ment, alias Landers, his mother, and Captain "Thomas Landers, her present husband, for his "interest, ought and should be decerned and "ordained by the decree of the Lords of our Council "and Session, to make payment to the Pursuer of "the sum of 200*l.* sterling, annually; or of such "other sum, less or more as our said Lords shall "think a reasonable allowance for his maintenance

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" and education, and that at two terms in the year, " Whitsunday and Martinmas, by equal portions, " beginning the first term's payment thereof at the " term of Whitsuntide next for the half-year pre- " ceding, and termly thereafter during the natural " life of the said Mrs. Jane Anne Woolley, alias " Maidment, alias Landers, with 20*l.* sterling of " liquidate penalty for each term's failure in the " payment of the said aliment, and interest thereof, " from and after the respective terms of payment, " during the not payment of the same.

" This action having come to be debated before " the Lords of the first division, and their Lord- " ships having advised the libel, and heard the " counsel for the parties, they decern at the Pur- " suer's instance against the Defender, his mother " and her present husband for his interest, for the " payment within ten days from this date, of the " sum of 50*l.* sterling, in name of interim aliment, " as also for the dues of extract if payment shall " not be made within the period above-mentioned, " and allow the said interim decree to be extracted, " without abiding the order of the minute-book. " And further, the Lords appoint the parties to pre- " pare, print, and box memorials, on the whole " cause, on or before the first box-day in the ensuing " vacation, under an amand of 10*l.* each; and ap- " point the parties mutually to subjoin to their me- " morials condescendences of the funds and effects " in the hands of the Defenders."

The Appellant put in a petition against this judgment. She there contended, that the Respondent was not only major, educated to a genteel

profession, and in the receipt of more than comparatively fell to the share of the Appellant and her family, but that he was also invested in the fee of that whole property, out of which the Appellant, his mother, drew only an interim aliment. As fiar of the property, and being of full age, he was vested with a fund of credit, which he might burden or impignorate, as he thought fit.

But their Lordships "refused the prayer of the "petition, and adhered to their former interlocutor "complained against."

Of same date (26 May, 1815) their Lordships pronounced judgment upon the mutual memorials and condescendences by which judgment they sustained "the Respondent's claim and process of "aliment *super jure naturæ* against the Appellant, "his mother, and her husband for his interest; but "before modifying the annual amount thereof, they "appointed Respondent to print, lodge, and box "within ten days from this date, an additional and "more articulate condescendence of the funds and "income in the possession of the Appellant."

From these interlocutors, the Appellant appealed: and the reasons of appeal in the printed case were these:

I. Because the action is incompetent, aliment being only due to children from parents who are minors, impotent, or unable to work for themselves, whereas the Respondent is major, educated to a profession, and is thereby able to earn a living.

II. Because no action for aliment is competent at the instance of a child against a parent, but where such child is in want, deprived of the necessaries of

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life, and where the parent is, on the other hand, able to relieve him; but the Respondent is fiar of a landed estate, which he may dispose of or mortgage to those who shall supply him with what is necessary, but which supply the Appellant, from the smallness of her income, cannot advance to the Respondent, nor is she obliged to do so.

III. Because no aliment is due by parents but when they are able to give it. Whereas, the Appellant is not enabled so to do, in as much as by her marriage to Captain Landers her property was transferred to him, who *super jure naturæ* is not bound to aliment the children of a former husband.

IV. Because the annuity out of which any aliment shall be taken is settled upon the Appellant by the marriage articles which invests the fee in the Respondent, whereas any aliment to be taken from that annuity would be a direct violation of the provisions in those settlements, the superceding of which would necessarily vest the whole property in the Appellant, and make it disposable by her at pleasure.

In the printed case for the Respondent, the three points already mentioned were insisted upon; and the principles contended for were supported as follows:

That the Respondent, in the preceding observations, has not mistaken the principles of Scotch law applicable to such cases as the present, will be manifest upon the slightest attention to the following cases, which are selected amongst many that might be referred to. In the case of Straitons *against*

Laird of Laurieston, reported by Morison, p. 418, under the head, "Aliment *ex debito naturali*," majority was not held to be the term at which aliment must cease. The children there had provisions, payable at their age of fifteen, or at their marriage with consent. "And the Lords found "that the clause, as it is here conceived, obliging "the father himself in his own life, was suspensive "as to the payment of the stock, till it appear how "the children would marry; but that the brother" (who as heir came in place of his father *in quantum lucratus*,) "was obliged to aliment them, *medio* "*tempore*, from their age of fifteen, from which the "annual rent of their sums was modified." The case of Dalzell *against* Dalzell is thus reported: (Mor. p. 450.) "In a question between these "parties, it had been determined that the Defender, "who had succeeded to his father in an opulent "family estate, was obliged to maintain the Pursuer, his niece, by an elder brother deceased. "The next question was, how long this aliment "should continue; the Defender contending that it "ought to cease as soon as the Pursuer was able to "earn her living by her own industry. The Lords, "however, found, that in the circumstances of this "case, the Pursuer was entitled to 30*l.* *per annum* "during her life, or till her marriage." To the report of this case, the following note is added: "The circumstance which chiefly induced the "Court in this case to appoint the aliment to continue *after majority*, was, that the Pursuer was "the grand-child of the representative of a family "of such dignity, that although she was the issue

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" of a clandestine marriage with an obscure woman, " yet it was inconsistent with the honour of the " family to permit her to be in a situation in which " she might be under the necessity of engaging in " some mean employment for her subsistence. This " was consistent with former decisions where such " a circumstance had occurred. See No. 48, &c. " These cases were quoted in the argument." In Campbell *against* his father, decided February, 1741, " the Lords found that even foresfamiliation " did not exclude aliment *super jure naturæ*." The report of Chiesly *against* Edgar of Wadderlie, July 5, 1676, Mor. p. 417, is as follows: " Edgar " of Wadderlie being charged upon an indenture " betwixt him and Samuel Chiesly, Chirurgeon, " for payment of the sum therein contained, for his " brother's prentice fee, and entertainment during " his prenticeship; and having suspended the said " bond, and intended a reduction thereof upon " minority and lesion; the Lords found that the " second brother having no other means nor pro- " vision, his eldest brother, who was heir to his " father, and had the estate, ought to entertain him " and put him to a calling; and did not sustain the " reasons of lesion." The Respondent may also refer to the case of Ramsay *against* Rigg. (June 4, 1687, Morison, p. 391.) In this case, the claim of aliment rested partly on the act 1491; but that circumstance is obviously of no importance, because that statute only makes certain persons liable who were not so before, but does not affect any defence against aliment founded on the circumstances of the claimant. It is obviously therefore a

good precedent in this instance. It is thus reported: "Simeon Ramsay pursues his mother for "an aliment out of her jointure, because he was a "minor (though the president said it imported not "whether he was major or minor, if he could not "live *aliunde*, and was bred not by his parents to a "trade which could make him subsist), and she "life-rented all, and was married again. *Alleged*, "He was bound apprentice to a skipper, and was "eighteen years of age, and had run away, and she "had only 600 merks by year. The Lords modified to him 100*l*. Scots yearly."

From the cases which have now been mentioned, the Respondent apprehends it must be apparent, that, in awarding aliment, the Scotch law does not adopt any fixed or invariable rule, but adapts its decisions to the circumstances of each case; and the Respondent is confident that the Appellants will be unable to bring forward a single precedent in which the Court conceived themselves to be fettered by a strict rule, and were not guided by the specialties of the question. This being the fact, he has no great apprehension respecting the result of this appeal, as he trusts it is impossible to deny that the Court of Session have rightly considered the circumstances of the parties, and duly applied the law. It happens, however, curiously enough, that the very question now under review was decided in the case of Ayton *against* Colville, July 25, 1705, which was stronger than the present in this respect, that the party found liable to aliment was not his mother but his stepmother, who life-rented his father's estate, and that

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the Pursuer was not about to be, but actually was, an advocate; which last circumstance was pleaded as a defence, but it was repelled in consideration of the answer: "*The name of employment will not* "*afford a man bread, and* officium nemini debet esse "damnosum. *Neither is the race always to the* "*swift, nor the battle to the strong; for many* "*advocates have risen to great eminency who, at* "*the beginning, have had little or no business.*" It is proper to attend also to the extent of aliment decreed. "The Lords," the report bears, "modi- "fied *the fourth part* of the lady's life-rent for the "Pursuer's aliment; and decerned her to make "payment to him accordingly, albeit he was quar- "relling her life-rent in a reduction; seeing if he "prevailed therein, the aliment would cease."

Hitherto the Respondent has confined himself to the mere law of the case, and argued on the supposition that the Appellant had done nothing to create or strengthen her obligation. But, 2dly, It is obvious that in this case *res non sunt integræ.* The Appellant, as already stated, has all along directed the Respondent to the profession of the law, and never, till the unfortunate event which necessitated this action, denied him the means of finishing his education, and obtaining every requisite accomplishment. If there be any fault in his having attached himself to such a profession, the blame rests with the Appellant entirely. It is owing to her at least as much as to the Respondent, that he is not in a situation to maintain himself without assistance. Her selection, therefore, of this profession, would

fix and extend her liability were it limited at common law, and completely exclude *personali exceptione* the defence she has attempted to maintain.

It is again objected, that the action was not competent before the Court of Session, and that Chancery was the proper forum for the determination of the question.

It is answered, this objection is in perfect consistency with the rest of the Appellant's conduct; but it is apprehended that an action of aliment is, from its nature, so urgent, as to be entitled to a decision in any court to which it can be legally carried with most ease and expedition. Now, it is not denied in this instance, that both parties were completely within the jurisdiction of the Court of Session; indeed, the Appellant, Mrs. Landers, had been domiciled, and had spent her ample income in Scotland for several years before. In these circumstances, to send the Respondent to Chancery is an utter evasion, and implies, besides the monstrous inconsistency of making a person who is at this moment comparatively indigent, seek expensively in another country that redress which he might obtain more cheaply, and with as much justice, at home. It is obviously a matter of no consequence whence the Appellant derives her income,—from what country or from what source: the great and leading point is, that she has a large income, and is the Respondent's mother,—bound by nature, as well as by her own conduct towards him, to support him in a manner becoming his station. Whence the income is derived is a mere matter of history, and can have no influence upon obligations, which

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do not depend upon the nature or origin of the Appellant's revenue, but upon the fact that such revenue exists. Suppose the funds were situated in the colonies, or in a foreign country, would the plea be for one moment listened to, that the Respondent must stop the business of his education, and ruin his prospects in life, by seeking abroad the assistance which he may procure at hand, and which, even should he find it, may be obtained too late? It is apparent too, that in the country where the parties reside, their wants must be best known, and the redress most accurately measured. It need only be added, that as the whole property in Chancery is life-rented by the Appellant, no remedy could be given there different from that sought here,—an allotment to the Respondent of a certain part of his mother's income; so that as the Appellant did at the time reside and spend her fortune in Scotland, it is again submitted that the Court of Session, in the present circumstances, is not only competent to the decision of this point, but is, in fact, the only Court before whom it could with any propriety have been brought.

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Lord Eldon, (C.) It is quite clear that by the settlement the issue could touch nothing till her death, except the 200*l.* which she had power, with consent of the trustees, to raise for them. This was the case of a settlement made by the Court of Chancery in England upon a ward of that Court on her marriage at fifteen years of age; and the Court, settling a bargain, as it were, between her and the issue, gives her a life interest in the personal pro-

perty, and the whole to the children of the marriage on her death: and a life estate in the real property, with remainder to her first son in tail. Then the important question which the House may be called upon to determine is this, whether when such a bargain has been made by the Court of Chancery with all the caution that belongs to a settlement made under such circumstances, she, to whom the whole might have been given, and who got only a life interest, is to be obliged, merely because she removed to Scotland, out of that life interest to aliment not only the eldest son but the whole of her children; for the principle of the *jus naturæ* goes to that extent, or it is nothing. So that it comes to this, whether the settlement of the real and personal property made for her and her children by the Court of Chancery is to be so far altered as that the issue shall still have the whole of the benefit provided for them, but that her life interest is to be cut down. It is difficult to assent to that proposition, and the difficulty was felt by the Judges. One Judge says that he could not touch the settlement; but the Court considered it as a clear case on the Scotch *jus naturæ*. And it comes round to this, that the House may be called upon to determine the great question whether a settlement made by the Court of Chancery under such circumstances may be undone in this way, and to what extent. And if it is to be disturbed for the children, why not for the mother. It is not likely this should be decided before the recess, and it would be very desirable if it could be settled in the mean time.

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I see the common lawyers have taught the Scotch lawyers to talk about the delays of the Court of Chancery. As to that I say only "*sat cito, si sat bene.*"

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Lord Eldon, (C.) When we consider the nature of this case, the opinions of the Judges of the Court of Session are certainly rather a surprise on an English lawyer. But we ought to recollect, and if we do not admonish ourselves, others will give us the admonition, that we ought not to consider Scotch cases under the influence of English impressions. (*Lord Redesdale.* This is an English case.) The Noble Lord says that this is an English case; and when we look at the notes which we have of the observations and comments of the Judges, if we ought, in the administration of Scotch law, to recollect that we are English Judges, I venture very respectfully to hint to them that, when they are dealing with questions of English law, they should recollect that they are Scotch Judges. This is an English case; and it appears very strange on English principles, that when the children are by a marriage settlement made purchasers of the principal of the subject, and the parent of the interest of it for life, they should be entitled not only to their own share, but that *jure naturæ* they should be entitled to a part of the parent's share.

This settlement was made and the marriage solemnized in 1791. Maidment was in debt, and died in 1804, and he and his creditors being out of the question, she was entitled for her life according to the marriage articles. The Respondent stated in his

case that his mother had always supplied him liberally till her marriage with Captain Landers, and that then her liberality had been discontinued. Then this action was brought, and the result was, on the ground there stated, a judgment that she was obliged to aliment him; the parties respectively having the interests mentioned in this marriage settlement. By the first interlocutor the Court decerned for 50*l.* to the Pursuer in the name of *interim* aliment, and ordered memorials and condescendences. The Appellant petitioned against this interlocutor, but the Court adhered, and sustained the claim of aliment, *super jure naturæ*, but before modifying the amount ordered a more particular condescendence of the funds in the mother's power. When this was before the Judges below there was a difference of opinion, and instead of proceeding further below, the Appellants appealed, as parties are entitled to do from interlocutory judgments where there is a difference.

The case is to be considered, not merely with reference to the point of the *jus naturæ*, and the means of the parent to aliment, and other circumstances but with reference to the doctrine of Scotch law, when applied to the effect of an English settlement. I do not state any of the adjudged cases as to life-renters and fiars, as this case cannot be considered in that view. The real question is whether, after a contract had been made, by which the children were to have the principal of her fortune, and she was to have her own maintenance for life out of the funds, she was obliged to aliment the Respondent out of her share. The obligation between parent and

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child in Scotland is different from ours. Here it is almost gone at the age of majority, whatever it may be in a moral view. But according to the Scotch law, although a provision is made for the children; if not payable at the time of majority, they are entitled to aliment even after their majority, and regard is paid to their having no means, and to their ability to support themselves in the circumstances in which they have been educated; and some cases go even the length of reference to the dignity of the family, which we could not reach at all. And the case of *Ayton v. Colville* justifies what the judges say as to advocates. The fact that the Pursuer was an advocate was there stated as a defence, but the defence was repelled for the reasons there stated.

Now in this case it does appear to me impossible that on the ground either of the *jure naturæ*, or the office of advocate, this judgment can be sustained. Here is the case of one who need not wait the delays of the Court of Chancery. He has an immediate vested interest in a large share of the property, and may deal with it in the market, in which his interest would be better than that of his mother; and he is first tenant in tail in remainder of the lands to be purchased; and he had therefore sufficient aliment. It does appear to me therefore, in considering these circumstances, that this is not a case where aliment ought to be allowed according to the law of Scotland.

I propose therefore that the judgment be reversed with something of this nature, that the Lords having regard to the marriage settlement, and the provisions of it, therefore reverse the judgment.

Mr. Warren.—Would your Lordships give costs to the Appellants. May 27, 1818.

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Lord Chancellor.—I am apprehensive we cannot give costs, where three Judges out of four are with the Respondents.

Judgment accordingly REVERSED.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

WADDELL and another—*Appellants*
WADDELL—*Respondent.*

A. by disposition and settlement, gives his moveable property, except the debts due to him, to B. the object of his particular favour; and the residue of the debts due to him, after payment of the debts due from him, to B. in life-rent and to C. in fee: and gives the life-rent in his lands to B. and the fee to C.; declaring that B. by acceptation of the deed, should be bound to pay the whole of his debts; manifestly conceiving that his moveable property would be much more than sufficient for payment of his debts, and intending that B. should have the life-rent in the lands free. The moveable property turns out not to be sufficient to pay the debts, and action brought by the life-rentrix against the fiar for relief and sale of so much of the lands as would pay the balance, &c. and relief decreed below. But the judgment *reversed* in Dom. Proc., the disponer, although he intended that B. should have the life-rent free, having expressly subjected B. alone to the payment of his debts, for which she became liable to the amount at least of the benefit which she derived from the deed. Mar. 9, 1818.

SETTLEMENT.—LIFE RENTER.—DEBTS.

THIS action was brought by Jean Waddell, sister of the late William Waddell, of Easter Moffatt,