

1778. March 8. Mrs NICOLAS THOMPSON and OTHERS *against* DAVID MACCULLOCH and his TUTORS *ad litem*.

ALIMENT.

Additional Aliment due to the Widow when her Terce is inadequate.

[*Faculty Collection, VIII. 34; Dictionary, 434.*]

BRAXFIELD. As to aliment for the children, there is no doubt. As to the right of the widow, a widow unprovided is entitled in law to an aliment suitable to her husband's circumstances, in case she does not accept of a voluntary provision. What is suitable to a husband's circumstances? If the husband has bonds, bearing interest, to the value of L.10,000, and a land estate of L.50 *per annum*, would the terce of the income of that estate be a sufficient provision? I would provide for the younger children, and then give the widow the third of the remainder.

COVINGTON. That seems rather too much; for the heir is proprietor, and liable to fall of rents and expense of management.

On the 8th March 1778, "The Lords decerned L.60 to the children for seven years, or till recalled by the Court; and they decerned L.20 in addition to the widow's L40."

Act. Ilay Campbell. *Alt.* A. Gordon, *Btius*. Incidental, Inner-house.

1778. June 19. JAMES CHALMERS *against* Captain CHARLES NAPIER.

APPRENTICE.

Detention of an Apprentice to serve at sea by an Impress-officer.

[*Faculty Collection, VIII. 59; Dictionary, 594.*]

HAILES. The interlocutor of the Admiral is very singular. In effect, it tended to remove the cause out of his Court; for, instead of giving judgment or seeking farther light, he stopped all procedure, "that the complainer might apply to the Lords of the Admiralty."

JUSTICE-CLERK. The arguments for incompetency used by Captain Napier, on the Act 1681, are insufficient. According to his argument, there is no security for any person in this country. It was proper in Chalmers to apply to the Admiral, for the Admiral had a well-founded jurisdiction: he was called upon to determine one thing or other; for the plea was made on common law,

supported by a statute, which the complainer said applied to his case. If the Admiral had dismissed the complaint, Chalmers might have resorted to the appellat jurisdiction in this Court. Instead of that, the Admiral referred Chalmers to the Lords of the Admiralty, who have no jurisdiction. He would not so much as allow to the complainer the common law security of keeping the person of the apprentice within the country. Here was a *denegatio justitie* on a demand founded on the law of the land. If Chalmers's plea was good, his apprentice had the same security against being pressed that any member of this Court has. If we had any doubt as to the competency of this advocacy, the consequence would be, that, if the matter had been once brought before the Admiral, and if the Admiral had left it to the determination of the Lords of the Admiralty, we could give no redress for any wrong whatever. Is this a *maritime* or *sea-faring* cause because the violation of a contract of indenture is said to have happened in the Road of Leith? It is said that the offence charged is piracy, wherein the Admiral has an exclusive primary jurisdiction. But this is a mistake: the ground of complaint is not for the seizure but for the detaining of the apprentice after a contract of indenture was produced. Liberty is a common law-right: it is neither maritime nor sea-faring.

COVINGTON. The privative jurisdiction of the Admiral is under a double limitation,—as to place and as to offence. If the nature of the crime is maritime, the Court cannot advocate.

KAIMES. This cause is neither maritime nor mercantile; it is an application to the Judge-admiral for restoring a man to his liberty. The cause came before that judge because the *person* of the apprentice was at sea. But whether the cause was maritime or mercantile, or neither, is of no moment; a judge must act: *here* the judge declined to act, and left judgment to private men.

BRAXFIELD. I am clear that this is none of the cases in which the Judge-admiral has a privative jurisdiction.

On the 19th June 1778, "The Lords remitted to the Ordinary to pass the bill;" repelling the objection as to competency.

Act. Ch. Hay, H. Erskine, A. Crosbie. *Alt.* Ilay Campbell and King's Counsel.

Reporter, Stonefield.

1778. June 25. JOHN and JAMES WILSONS *against* HENRY LOCHEAD.

PROCESS.

Proceedings in absence before expiry of the *inducia*.

[*Faculty Collection*, VIII. 38; *Dictionary*, 12,003.]

BRAXFIELD. I am for observing forms, but so that material justice be not hurt. The first judgment was erroneous, for the party was not in Court. It