

(Ex debito naturali.)

1677. July 5.

The CHILDREN of the Laird of Lawriston *against* LAWRISTON.

No 55.
An heir who had paid to his mother the aliment of his sisters for three years, found obliged to continue the payment till their provisions became due.

THE deceased Laird of Lawriston, by a second contract of marriage, provided 10,000 merks to his two eldest daughters, begotten before that marriage, and 3000 merks to each of them, that should be born thereafter, payable at their age of 15, with annualrent thereafter; there being eight children of that marriage, this Laird their brother did for three several years give eight chalders of victual to their mother to entertain them; and now they pursue for five years aliment since that time. The defender *alleged* absolutor, because he was not obliged to entertain his brothers or sisters, either by law or paction, especially where they had provisions, which, though they bore not as yet annualrent, they might make use of a part of the flock. *2do*, Their mother entertained them, which is to be presumed to be *ex pietate materna*, as a donation to preserve the flock of their portions, and therefore she can claim nothing for bygones.—It was *answered*, That it is a natural obligation upon parents to entertain their children, whereunto the Lords have always given a civil effect, and allowed action not only against the parent, but against his heirs, and these children have no means before their age of 15; and as to their mother's entertainment, the presumption ceaseth, because their own provision is very small, and she hath both claimed and obtained from the heir, aliment for them for three years.

THE LORDS sustained the aliment, and remitted to the Ordinary to consider the condition of the heir's estate and the childrens' age; and to modify and report.

Fol. Dic. v. 1. p. 33. Stair, v. 1. p. 533.

1679. January 21. STRAITONS *against* LAIRD of Lauriston.

No 56.
Younger children, daughters, had provisions payable at their age of 15, or at their marriage with consent. Their brother found obliged to aliment them, till it should appear whether, and how they would marry.

THE deceased Laird of Lauriston having married his servant, with whom he had two children, by his second contract of marriage with her, ' he provides the two daughters born to 6400 merks, and each of the children to be born to 3000 merks, and obliges himself to pay the same to them, at their age of 15 years complete, or at their marriage, they marrying with consent of himself, and certain other persons named.' There being many children of this marriage, they pursue for payment of their portions against their brother, who *alleged*, That the term of payment was not come till their marriage; for their being two terms expressed, their age of 15 years, or marriage, *in alternatis. electio est debitoris*.—The pursuers *answered*, That in provisions of children, which by fatherly affection are extended, and not strictly interpreted, such clauses relative to marriage and a certain age, are always to be understood thus, That simply they are due

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at that age, but sooner, if they be sooner married; which, though it uses sometimes to be so expressed, yet oft times it doth not bear sooner, but at such an age, or their marriage, but have always taken effect at the marriage, if before that age, but have never been so applied, so as if they never married, never to have right; which is yet more evident in this case, because there is neither aliment nor annualrent provided; so that they should have nothing if never married.—The defender *replied*, That whatever may be the construction, as to provisions of heirs-female excluded by an heir-male, which must presuppose the father's death, before their provisions can take effect; yet here, where the father himself in life is bound to pay, it cannot be thought that he did not leave himself that latitude, either to pay at their age of 15, or at their marriage. *2do*, There are not only here two terms, but the obligation is conditional, viz. They marrying with consent of their father, the defender, and others; and till that condition be purified, they cannot crave payment.—It was *duplicated*, That this condition of consent cannot be interpreted a suspensive condition, putting a necessity upon them to marry, or otherways to have neither stock nor annual; but a resolute clause, that if they did marry without consent, they should be obliged to restore, which could not hinder them from payment upon caution, in case they should transgress; and the freedom of marriage hath made such clauses only to import that they should demand consent; but if it were refused without reason, whereof the Lords are judges, yet if they married without just exception, their portions should be due.

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 was obliged to aliment them *medio tempore*, from their age of 15, for which the annualrent of their sums were modified; but it was not determined, whether, if they should never marry, their portion would not belong to their nearest of kin, but absolutely fall to the brother. See ALTERNATIVE.

Fol. Dic. v. 1. p. 33. Stair, v. 2. p. 676.

1678. July 23.

THOMSON against WILKIE.

UMQUHILE Walter Wilkie having several children, one called Thomas became furious before his father's death, and his father provided nothing to him, but made his relict his executrix and universal legatrix, who entertained the said Thomas during her life; and after her decease, William Thomson having married Lucas Wilkie his sister, he entertained him 14 years, and now pursues Agnes Wilkie, who succeeded to the whole means of both father and mother, for the aliment of the furious person, in respect that it was a duty by the law of nature, both upon his father, and in case he had no means, upon his mother, to

No 56.

No 57.

A sister succeeding to the means of her father and mother, found liable in expence of alimending her furious brother; but that only in so far as she