

solved to modify the same the more largely, because they allowed nothing for the bygone aliment of the sisters, and ordained the condition of the heir's estate to be instructed, that they might modify his own aliment, and aliment to his sisters, till they were able to fend for themselves.

No 112.

*Stair, v. 2. p. 434.*

1681 February 16. SPENCE and her HUSBAND against FOWLIS.

IN an action of compt and reckoning, between Margaret Spence and Fowlis of Ratho, her good-brother, as her curator, he craved deduction of 300 merks yearly for her aliment in his family, from her age of seven years, till her marriage, she being now about 50, and for L. 60 yearly for her gentlewoman, who was partly servant to the family, and partly to herself. It was *alleged* for the said Margaret, That she received nothing but meat, and drink, and lodging, the expenses of her cloaths being all allowed in her account, for which she could not be liable, at least for the time she came to 16 or 17 years of age, because she was as useful in the family as her entertainment came to, having employed all her labour and industry for the interest of the family, and not for herself, and having governed the family after her sister's death. *2do*, She cannot be liable since her majority, because the LORDS have several times found, that where any person being major, is entertained where there is no agreement, it is held to be a free donation, and to import no obligation. It was *answered* for Ratho to the *first*, That the said Margaret was never treated as a servant, but as a sister, and for a long time as mistress of the family, nor was she obliged to any service or industry, but what kindness she did, Ratho did the like to her, in managing her whole means, which is now very considerable, near L. 20,000; and by this marriage, when she hath no hope of children, Ratho's children, and her other relations, are all disappointed, and have no reason to gratify her husband a stranger; to the *second*, albeit the entertainment of persons being major is presumed to be gratuitous, yet here there are two relevant exceptions, viz. *1st*, That her entertainment began in her minority, during which time she is unquestionably liable, and after her majority, it is continued *per tacitam reconventionem*; *2nd*, There is a stronger presumption here, Ratho being *debitor, qui non præsimitur donare*.

THE LORDS allowed 200 merks yearly, till Margaret's majority, and 250 merks thereafter, while she was in the family.

*Fol. Dic. v. 2. p. 142. Stair, v. 2. p. 860.*

\* \* \* Fountainhall reports this case :

IN a curator count, Ratho claimed aliment the years she stayed in his house. *Alleged* none due, because no paction for it. *Answered*, though paction be re-

No 113.  
The Lords allowed aliment, though without paction, bestowed upon a woman now 40 years old, in respect it was begun in her minority, and continued till that age.

No 113.

quisite *inter majores*, yet here she entered when minor, and continued long after the same. THE LORDS allowed aliment during all the years of her abode in his family, in respect it was begun in her minority, and she remained therein till she was 40 years old, but they modified the aliment for her and her husband to 250 merks *per annum*, though she had L. 10,000 Scots of portion.

Fountainball, MS.

No 114.

A woman who had a small jointure, entertained her son, paid his prentice-fee and funeral expenses. In a suit at her assignee's instance against her son's heir, who was also his cousin, the Lords found that the presumption of entertaining *gratis* ceased here.

1697. November 17. ALISON GOURLAY against JAMES URQUHART.

A MOTHER entertains her son for several years, pays his prentice-fee, and when he dies minor she is at the whole expense of the funerals; and assigning her grounds of debt, the assignee pursues the next heir, for constituting these debts, to affect the heritage he might succeed to as heir to his cousin. It was *alleged*, Your cedent can never claim these as debts, seeing it is presumed that she alimeted *ex pietate materna*, especially seeing she liferented her son's whole stock, and so *jure naturæ* was bound to maintain her own son. *Answered*, Where a mother has such a competent liferent as may maintain both herself and her children, there it may be rationally presumed, that she does it *gratis*, and by the natural obligation lying upon her to maintain and educate; but if it be such as can hardly maintain herself, as here all she possessed was alenarly four acres of land, paying L. 5 Sterling yearly, the presumption that she did it *ex pietate* ceases, and what she expended must affect the fee of the acres. It is true, there is a decision, 17th November 1680, Sandilands *contra* Telfer, *voce* TUTOR and PUPIL, where it was found, that a tutor could acclaim no more from his pupil but the annualrent of his stock, and they might not break on the fee; yet there it was not so strait a liferent but it might soberly aliment them both; which was impossible in this case. THE LORDS found the presumption of entertaining *gratis* ceased here. Yet if it had been betwixt the son and mother, there might have been more debate; but he who now fell into the fee of the acres, on her son's death, being a stranger to her, the LORDS thought it hard to construct what she had furnished to her son as donation *quoad* him; seeing whatever she might have quit to her son, it is not to be presumed she intended also to gratify thereby his remoter heirs.

Fol. Dic. v. 2. p. 142. Fountainball, v. 1. p. 795.

No 115.

1731. February. CREDITORS OF KIMMERGHAME against HUME.

A CREDITOR in an heritable bond of L. 8000 Scots assigned the same to his debtor's daughter *in familia* with her father, the father having died bankrupt. In a competition between the young Lady and the personal creditors of the de-