

ALIMENT.

451

(*Ex debito naturali.*)

1688. February 17.

ELPHINSTON'S CHILDREN, *against* ELPHINSTON Laird of Airth, and his TUTOR.

AN eldest brother found liable *jure naturali*, to aliment his unprovided younger brothers and sisters, according to his ability.

Harcarse, (ALIMENT.) No 23. p. 6.

No 85.

* * * The following case, as reported by Fountainhall, is recorded also under the division of this Title relative to the Act 1491. No 12.

1705. July 25.

MR WILLIAM AYTON of that Ilk, Advocate, *against* Dame MARGARET COLVILL, his Step-mother.

MR WILLIAM AYTON of that Ilk, as heir to his father, having pursued Dame Margaret Colvill his step-mother for an aliment, in respect his father's estate was so overburdened with her liferent, the provision of her children, and extraneous debts, that there was not a competency left to sustain him, the heir :

Answered for the defender : Aliment can only be claimed by the pursuer, either by virtue of King James the Fifth's statute, ordaining superiors to aliment their ward vassals ; or *super jure nature* ; none of which holds here, the defender being a stranger to the pursuer, and not his own mother, and secured in a jointure by her contract of marriage, which cannot be diminished *contra fidem tabularum nuptialium*. 2do, Such aliments are only given to minors who are destitute of any other mean of subsistence, and not to those come to age who have a calling ; that idleness may not be encouraged ; 11th February 1636, Sibbald *contra* Wallace, No 9. *supra* ; 21st July 1636, L. Ramorny *contra* Law, No 10. *supra* ; now the pursuer is major, and an advocate. 3tio, The defender is burdened by her contract, with the aliment of her own children, till they be seven years old ; and therefore cannot be further burdened with the heir of the first marriage. 4to, The pursuer can have no benefit by this aliment ; for he being served heir *cum beneficio*, it must be added to the inventory, and accrete to his father's creditors. 5to, Personal debts exhausting an estate, were not thought sufficient to found an aliment ; 18th December 1667, Dobie *contra* Lady Stoniehill, No 15. *supra* ; and there is no real diligence by adjudication or infeftment upon the estate of Ayton, to debar the heir from possessing.

Answered, imo, The alimentering of heirs is introduced by immemorial custom, that is much stronger than positive statute ; and it is always sustained against step-mothers having extravagant jointures. 2do, The name of an employment will not afford a man bread, and *officium nemini debet esse damnosum*. Neither is the

No 86.
A mother-in-law found liable to aliment her husband's son.