

sent her not, or thrust her out of doors, yet it taketh off the presumption that her meaning was not to entertain her *gratis*. *2do*, Entertainment *ex pietate* not extended beyond father and mother, especially where the person entertained has sufficient provision, and the father is so far liberated of that burden.

THE LORDS found the entertainment in question presumed to be made *animo donandi*, till the requisition; but from thenceforth, found the father liable.

Fol. Dic. v. 2. p. 141. Stair, v. 2. p. 770.

* * * Fountainhall reports this case :

A PURSUIT for the sum of _____ for alimentering the defender's child: The LORDS found this defence relevant, That the pursuers having kept their own grandchild, the defender's daughter, in family with them, it was presumed to be *ex pietate parentali*, and so there were no expenses due for her aliment, except there had been a paction to the contrary: As also, found this reply relevant, That the pursuer required the defender to take home his daughter, and that he sought her back, and she was ready to part with her, so as to make the defender liable for her aliment since the requisition or offer, and found them probable by writ, witnesses, or oath of party, reserving the modification to themselves of the aliment.

Fountainhall, MS.

1683. *January.*

ALCORN *against* CHARTERIS.

No 100.

THE LORDS found, That a mother might crave allowance for alimentering, without paction, her daughter, after pupilarity, to whom she was then debtor; because *debitor non præsumitur donare*.

Fol. Dic. v. 2. p. 141. Harcarse, (ALIMENT.) No 19. p. 5.

1701. *February 15.*

WILSON *against* ARCHIBALD.

No 101.

PETER ARCHIBALD's daughter, a young lass, having staid three years in the house of James Wilson, burghess of Edinburgh, and got her breeding and education there, he pursues her father for her aliment during that time.—*See 2d January 1700, voce PROCESS.—Alleged, imo*, She was put in the quality of a servant, and went their errands; *2do*, No aliment, because no paction; and though she was a minor, yet he might validly have pactioned for an aliment with her father; which not having done, it was to be presumed gratuitous. *Answered to the first*, She was not capable of doing any service worthy of her board and entertainment; *2do*, She was not kept as a servant, but put to schools and liberally educated: As to the *second*, Whatever may be presumed, where a

No 101. friend comes and stays some time for a visit; yet here no such presumption can take place, where she staid three years; and though there was no stipulation or express paction, yet that does not infer a donation; where, *imo*, the giver of the aliment is but a poor person, and so not presumed to be gifted; *2do*, If he be debtor, *non præsimitur donare*; but Wilson owed Peter Archibald 300 merks by bond, which made Wilson advance the aliment the more frankly, that he knew he would have retention and compensation of his bond *pro tanto*; as was decided 15th December 1668, Winrame *contra* Elies, No 108. p. 11433.—THE LORDS repelled the defences, and found an aliment due; but modified it only to 100 merks yearly in full of all.

Fol. Dic. v. 2. p. 141. Fountainhall, v. 2. p. 109.

1703. January 15.

MR JAMES CHISHOLM, chirurgion in Linlithgow, *against* JAMES STEEDMAN, skipper in Grangepans.

No 102.

The Lords found nothing due for the aliment of a boy, in regard there was no paction thereanent, the entertainer being the boy's uncle.

This, according to Fountainhall. According to Forbes, aliment was found due.

JOHN BAIRDY, merchant in Linlithgow, being debtor to Mr Chisholm in a sum, he arrests in Steedman's hands the sum of 1400 merks, owing by him to Bairdy, on the account of aliment and board that Steedman owed for his son's entertainment in Bairdy's house at the schools in Linlithgow, for the space of six or seven years. *Alleged* for Steedman, That aliments are presumed gratuitous, unless there be an express paction and agreement to the contrary; which rule has only this *fallentia* and exception—if the person alimented be a pupil, and so not capable to make a paction; but even, in that case, if the pupil have either a father or have tutors, if no stipulation be made with them, law still presumes the aliment was given *animo donandi*, especially where the party is a near relation; as here the boy alimented is his own nephew, and had his father in life, and yet living within a mile of Linlithgow, and many opportunities of meeting, and much business betwixt them during the space of seven years, and yet never a word of aliment, or any thing demanded *eo nomine*. *2do*, He charged sundry small disbursements about mending the boys clothes, and the like, and got payment thereof; which is a demonstration he never designed to claim any aliment; otherwise, he would have sought all together. *3tio*, By a letter produced, he craved the loan of some money; which he would not have done had there been any thing due on the account of the aliment. *4to*, By a fitted account betwixt them, Bairdy is debtor to Steedman in a balance, and nothing of the aliment is there either stated or mentioned, though it was posterior to the whole years of the aliment. *Answered* to the first, *Nemo præsimitur suum jactare*, and donation is never presumed *ubi alia conjectura capi potest*; and l. 82. *D. De reg. jur.* says, *donari videtur quod nullo jure cogente conceditur*. And the rule presuming aliment to be gratuitous, holds only *inter*