

(Ex debito naturali.)

aliment yearly, as, in process of time, may make up a little stock to them at their majority; which the Lords condescended to, upon their giving bond in manner foresaid, that their discharge should be a sufficient exoneration to the heir and his tutors. (See TUTOR and PUPIL.)

I remember, in the Parliament, held in 1672, an overture was brought in, that, for providing younger children, it should be lawful for parents to burden the heir, even on death-bed, with a sum not exceeding three years free rent of the heritage; but, by a vote, it was rejected and cast out.

Fol. Dic. v. 1. p. 33. Fount. v. 2. p. 633.

1711. February 23.

MAXWELL against MAXWELL.

THE deceased Sir William Maxwell of Monreith, by his testament, nominates Sir Alexander his son, to be his only executor and universal legatar, with the burden of 5000 merks to his daughter Elifabeth, and some other small legacies. But Sir Alexander finding his father's moveable debts exceed the inventory of the testament, he pursues an exoneration before the Commissaries to prove exhausted. In which process, the said Elifabeth, and Andrew Heron, younger of Bargally, her husband, compear, and repeat a reduction they have raised of that testament, as being elicited *in extremis*, when insensible, *et contra officium pietatis*, he having succeeded to an opulent land-estate, and ought not *viis et modis*, to intercept their natural legitim. But, during this dependence, being unable to subsist, the said Elifabeth, and her husband, and Agnes, another sister, raise a process of aliment against their elder brother, as a *debitum naturale*, seeing *frater dives fratres vel sorores inopes alere tenetur*. Yea some lawyers go farther, that if she be *dote destituta tunc eam dotare tenetur*.—*Alleged*, imo, Against Elifabeth, that being married, she must be alimented by her own husband, especially considering that she went away without her father's consent; and though her husband has little during his father's lifetime, yet law has prescribed an order of discussing, that his father should be, *primo loco*, conveyed *super jure naturæ*, to aliment him and his wife; and no law obliges a brother to aliment a sister, except so long as she remains a part of the family; but when she is emancipated, or passed into another family, his obligation ceases.—*Answered*, Not only the common law, but our municipal customs, have laid this burden on brothers, without respect to marriage or not, but merely if necessitous and poor; as was found 8th January 1663, Lady Otter, No 49. *supra*—29th June 1676, Rowe, Stair, v. 2. p. 434: (See PRESUMPTION.)—5th July 1676, Chiefly, No 54. *supra*—and 5th July 1677, the Children of Straiton of Lawriston, No 55. *supra*. And this case is more deplorable, that she has fundry young children; and her father had so far connived at her escape, that he left her 5000 merks. But Sir Alexander, her brother, offered to secure that to her children; debarring the father.—THE LORDS found the mar-

No 60.

No 61.

During the dependence of a reduction of a father's testament, betwixt a sister pursuer, and a brother defender, she, being married, found entitled to no interim aliment.

(Ex debito naturali.)

No 61.

ried sister could crave no aliment from her brother. Some thought, if she had been living separate from her husband, there might have been some more pretence. Then Agnes, the unmarried sister, craved an aliment to be modified to her.—*Answered*, *imo*, You are major and past twenty-one, and so can claim no aliment, but should, by some virtuous course, provide for yourself. *2do*, You deserted my house, and suffered your brother-in-law to over-reach you, in disposing all you can claim for your portion to him. *3tio*, I am willing to take you back and maintain you honourably, conform to your birth; and, in regard the surmises her return may be uneasy and uncomfortable to her, because of her disobligations, he is content she reside with any of her sisters or aunts, to whom he shall pay such a competent aliment as the Lords shall determine. *Replied*, She being now *sui juris*, cannot be confined to a particular place, but has the choice where she thinks fit to live.—THE LORDS thought the brother's offer reasonable, and therefore allowed her to chuse any of the friends named, for the place of her residence, in which case they would modify an yearly aliment to her, during the dependence of the process betwixt them: But if she refused, and would rather stay where she is, then they would assilzie her brother from any aliment.

*Fol. Dic. v. 1. p. 32. Fount. v. 2. p. 641.*

1715. July 23.

THE CHILDREN and RELICT of FORBES of Knaperny, *against* FORBES.

No 62.

An heir succeeding to a competent estate, as heir to his father, found liable to aliment his brothers and sisters, unprovided for.

THE deceased Knaperny left a considerable land estate, and free executry; and having five younger children, four of whom were unprovided for at his death; their elder brother, before he elected curators, grants them bonds of provision, bearing annualrent from the term preceding their dates; and declaring, that the said sums are in full satisfaction for bairns part of gear, portion natural, legitim, &c.; and then having elected curators, he is confirmed executor to his father. But the four younger children being thereby unprovided in the interim, intended an action of aliment, libelling upon the foresaid bonds of provision. To which the defender and his curators *answered*, That the bonds were null, as being granted without consent of curators.—*Replied* for the pursuers, That the bonds were not libelled upon as the *medium concludendi*, (which was founded upon the natural obligation, and *frater dives tenetur alere, &c.*) but only as a view or meith for the quantity of the aliment. (See ELPHINGSTONS *against* ELPHINGSTON, *infra, b. t.*)

THE LORDS found aliment due.

*Act. Elphingston.*

*Clerk, Robertson.*

*Fol. Dic. v. 1. p. 32. Bruce, No 127. p. 167.*