

The pursuer

Answered: The only object of the statute 1491, was to compel a liferenter to support the heir of the estate. This case is now entirely cut off by the act abolishing wardholdings; but the spirit of it has been preserved, and the obligation of aliment has been much extended beyond the provisions in that enactment. The ties of relationship, and the natural duty of individuals, are equally strong in every class of society, and the natural obligation to aliment their children is equally general; nor is this a hardship, while it is accurately proportioned to their respective rank and ability; Dict. *voce* ALIMENT (due *ex debito naturali*;) Ersk. B. I. Tit. 6. § 56.; Blackst. Comm. B. I. C. 16. p. 448.

Before the case was advised, the father of the child had returned to this country, and was sisted in Court, but it was not thought that this could alter the judgment, as the grandfather had only been found liable *subsidiariè*, leaving to him to apply for relief, if the father could support the child.

It seemed the first time that this question had ever been tried in the case of a peasant, and the hardship of laying down a general rule in a case such as this, was strongly urged; entailing upon a poor and industrious race of men, the burden of maintaining the numerous families of their children, at a time when their years and their labours merited a different reward. But the view taken by the majority of the Court was, that every man, according to his means, was bound to support his children, and their descendents, whenever it became necessary. The reason of its having been formerly confined to landed men, was, that formerly these were almost the only persons, possessed of wealth; but now that other classes of the community share with them in the opulence of the country, this natural obligation must extend with the means of fulfilling it.

“ The Lords (23d February 1802) adhere to their interlocutor reclaimed
“ against, in so far as to find the petitioner liable to the pursuer in an aliment
“ to his infant daughter, at the rate of £6 yearly from the time of her birth in
“ March 1797, to the return of her father William White to this country in
“ the month of December 1800.”

Lord Ordinary, *Bannatyne*.
Alt. *Cathcart*.

For the Pursuer, *Boswell*.
Agent, *D. Murray*, W. S.

Agent, *W. Riddell*, W. S.
Clerk, *Pringle*.

E.

Fac. Coll. No. 24. p. 47.

1802. March 6.

RIDDELLS *against* RIDDELL.

HENRY RIDDELL died, leaving seven children under age, having executed a trust-settlement of his estate, providing each of his younger children to the extent of £3000, half of this sum not payable till after the death of the mo-

Younger
children,
whose pro-
visions are

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payable at
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ther, and the other half to be paid “ at the first term of Whitsunday or Martinmas after their respective arrivals at the years of majority, or their being “ married, whichever event shall first happen, with the due and ordinary interest of each provision, from and after the said term of payment, and thereafter during the not-payment, and a fifth part of penalty in case of failure ; “ and I also appoint my said trustees, or their quorum aforesaid, or the survivor of them, to make payment to each of my sons and daughters above named, or to any other sons or daughters that may hereafter be born of my present marriage, of the like sum of £1500 Sterling, and that at the first term of Whitsunday or Martinmas after the death of the said Mrs. Ann Riddell, their mother, with interest thereof thereafter till payment, and a fifth part more of penalty in case of failure ; and notwithstanding of the terms of payment of the said provisions, I hereby specially authorise my said trustees, or their quorum aforesaid, or the survivor of them, to advance or pay for all or any of my sons, such part of their said provisions as may be thought necessary for fitting them out in the world, and that to the extent of £1000 Sterling each ; and in the event of the death of any of my said children before his or her majority or marriage, the share of them so dying shall accresce and belong to the survivors equally, and to the children of any of them who may have previously died, leaving issue, equally among such children, for the deceiver's part.”

The children claimed the interest of the £1500 from the time of their father's death,

Pleading : The clause to this effect seems to have been omitted through inadvertency only ; for it never can be the intention of a man that his heir, who is eventually to succeed to a large fortune, should, till a certain event, be reduced to beggary, and be deprived of the advantages of an education suitable to the rank in society which he is destined to hold ; and still less can it be presumed to have been the intention of a father, who had even provided for a payment of £1000 of the capital to fit his sons out in the world, so far to overlook their true interest, as not to maintain and educate his children till majority. Independent of the presumption of the will, that the elder brother who succeeded to the bulk of the fortune was understood to pay the interest of their provisions till they became due, the younger children have by law a claim against him for aliment, as the heir of their father. This action they now maintain ; and they are authorised to do so by many decisions of the Court, in Dict. voce ALIMENT (*due ex debito naturali.*) In these cases, there was a capital sum belonging to the younger child, as there is in the present ; and when an aliment was given, the principal sum or subject belonging to him was not encroached upon, by borrowing upon it, or in any other way ; but the aliment was awarded to be paid by the representative of the father ; and it has also been found, that in a question with the mother about alimenting the younger children, the

heir is primarily liable ; Douglas against Douglas, 8th February 1739, No. 63. No. 4.
p. 425.

The heir

Answered : There is no obscurity in the provisions of the settlement ; and accordingly, the pursuers rest upon a presumed omission ; but such an assumption can never be legally made. The pursuers must either abide by the provisions of the settlement as they stand, or they must reduce it altogether, and confine themselves to what the division of the law would assign to them. Either of these modes stops the present action. Most of the cases referred to were where the younger children were totally unprovided for, while the heir had succeeded to an ample fortune, and the others are where the provision was at least very slender, which is not the case here. Besides, the testator has expressly declared the sum of £3000 to each child, to be in full of all claim against the estate.

The Court, looking upon this as entirely an omission on the part of the father, and that the children who were to succeed to an ample provision afterward, were not, in the mean time, to be deprived of the means of maintenance and education, held, that the trustees were bound to advance, in the mean time, out of the funds, what was necessary for the aliment of the younger children ; but did not think it necessary *in hoc statu* to determine whether this was ultimately to come out of the fee of their own provisions, or out of the subject belonging to the heir.

Lord Cullen, Reporter.

For the Children, *A. Campbell.*

Agent, *R. Boyd, W. S.*

For the Heir, *M. Ross.*

Agent, *Cha. Stewart, W. S.*

F.

Fac. Coll. No. 35. p. 71.

1802. July 6.

CHRYSTIE against MACMILLAN.

GRACE CHRYSTIE brought a declaratory action of marriage before the Commissaries of Edinburgh against Robert Macmillan younger of Barwhinnock, and obtained a decree (9th January 1801) in absence of the defender. Afterward, as Macmillan had left Scotland, she raised a process of aliment in her own name, and in that of her child, against James Macmillan, her husband's father ; and the Lords found her (6th July 1801) entitled to an aliment. In the mean time, however, Robert Macmillan returned to this country, and pursued a reduction of the Commissaries decree, which was conjoined with the process of aliment, on which a final judgment had not yet been awarded.

The whole cause was afterward stated to the Court in memorials ; upon advising which, the Lords (February 23d 1802) recalled their interlocutor in the process of aliment, so far as it related to the mother ; and superseded con-

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A father is not bound to maintain his son's wife, while his son is alive, and able to maintain her.