

No 110.
be held to
have aliment-
ed *ex pietate*.

recovered, the LORDS ordained the pursuer to assign the tenth part of the said estate, not exceeding 3000 merks, which was done upon that consideration, that the aliment was modified in respect of the said interest; and if *ex eventu* it should be found, that it could not be recovered, and that she had no estate, it were unjust that she should be liable personally, her grandmother being obliged at least presumed to entertain her *ex pietate materna*, if she had no estate of her own.

Clerk, *Monro*.

Fol. Dic. v. 2. p. 142. Dirleton, No 156. p. 67.

No 111.

1673. July 25.

KER against RUTHVEN.

THE LORDS found, That the estate of the Earl of Bramford being settled upon the Lord Forrester's son by act of Parliament, he could not have it but *cum sua causa*, and the burden of his debts.

Item, They found, That the Earl, having entertained his grandchild the pursuer, was to be presumed to have done it *ex pietate avita*, the Earl being a generous person, and having an opulent estate; and his grandchild having nothing for the time, but the debt in question, whereof the annualrent was provided and belonged to his brother.

Clerk, *Monro*.

Dirleton, No 177. p. 71.

No 112.

A mother having alimented an heir and two sisters; the heir was found liable for his own aliment, but for that of his sisters he was found not liable, the mother having been presumed to have alimented them *ex pietate*.

1676. June 29.

Row against Rows.

JANET ROW having alimented John, Elizabeth, and Christian Rows, from their father's death which was in September 1671 till now, pursues John Row for his own aliment, and for the aliment of his sisters, which were left infants, which the LORDS have oftentimes sustained against their father's heir, having a competent estate. The defender *alleged*, Absolvitor, because the natural obligation of parents to aliment children is merely personal, and doth not burden any representing them. *2do*, The defender's estate is very inconsiderable, not exceeding 300 merks by year. *3^o*, The pursuer is their mother, and hath the same natural obligation as their father to aliment them, and having accordingly alimented them, they having no means of their own, it is presumed to have been done *ex pietate materna*, and she can seek no payment. It was *answered*, That the mother is not able to entertain them, having a mean provision within L. 100 Scots, and can only be obliged *quantum potest*.

THE LORDS assoilzied from the bygone aliment of the two sisters, being alimented by their mother, but sustained the aliment for the heir himself, and re-

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.