

(Ex debito naturali.)

1677. July 5.

The CHILDREN of the Laird of Lawriston *against* LAWRISTON.

No 55.
An heir who had paid to his mother the aliment of his sisters for three years, found obliged to continue the payment till their provisions became due.

THE deceased Laird of Lawriston, by a second contract of marriage, provided 10,000 merks to his two eldest daughters, begotten before that marriage, and 3000 merks to each of them, that should be born thereafter, payable at their age of 15, with annualrent thereafter; there being eight children of that marriage, this Laird their brother did for three several years give eight chalders of victual to their mother to entertain them; and now they pursue for five years aliment since that time. The defender *alleged* absolutor, because he was not obliged to entertain his brothers or sisters, either by law or paction, especially where they had provisions, which, though they bore not as yet annualrent, they might make use of a part of the flock. *2do*, Their mother entertained them, which is to be presumed to be *ex pietate materna*, as a donation to preserve the flock of their portions, and therefore she can claim nothing for bygones.—It was *answered*, That it is a natural obligation upon parents to entertain their children, whereunto the Lords have always given a civil effect, and allowed action not only against the parent, but against his heirs, and these children have no means before their age of 15; and as to their mother's entertainment, the presumption ceaseth, because their own provision is very small, and she hath both claimed and obtained from the heir, aliment for them for three years.

THE LORDS sustained the aliment, and remitted to the Ordinary to consider the condition of the heir's estate and the childrens' age; and to modify and report.

Fol. Dic. v. 1. p. 33. Stair, v. 1. p. 533.

1679. January 21. STRAITONS *against* LAIRD of Lauriston.

No 56.
Younger children, daughters, had provisions payable at their age of 15, or at their marriage with consent. Their brother found obliged to aliment them, till it should appear whether, and how they would marry.

THE deceased Laird of Lauriston having married his servant, with whom he had two children, by his second contract of marriage with her, ' he provides the two daughters born to 6400 merks, and each of the children to be born to 3000 merks, and obliges himself to pay the same to them, at their age of 15 years complete, or at their marriage, they marrying with consent of himself, and certain other persons named.' There being many children of this marriage, they pursue for payment of their portions against their brother, who *alleged*, That the term of payment was not come till their marriage; for their being two terms expressed, their age of 15 years, or marriage, *in alternatis. electio est debitoris*.—The pursuers *answered*, That in provisions of children, which by fatherly affection are extended, and not strictly interpreted, such clauses relative to marriage and a certain age, are always to be understood thus, That simply they are due