

(Ex debito naturali.)

ther retained a competency to subsist himself and his family ; and it was by his posterior disposition to the second son, that he was reduced to misery and the want of bread ; which *beneficium ordinis* is agreeable to the decision, 7th January 1682, Hamilton fiar of Airdrie, *contra* Hamilton, No 8. *supra*.

No 82.

Answered for Alexander Brown the second son : Both their dispositions from their father, are *in pari casu*, and upon a level, except that the subject disposed to Alexander is scarce the half of what the eldest son got. The pretence that the second son should be discussed before the eldest, is altogether imaginary, and without any foundation ; seeing the tie upon children to aliment their parents, is not founded so much upon positive law, as upon the law of nature, whereby there is no order of discussion among those of the same degree ; who, being equally near in point of relation, are liable *pro rata* according to their abilities and circumstances. And if any *beneficium ordinis* were competent, it would turn the burden in the first place upon the child that enjoys most of the parent's means, and consequently upon the eldest son in this case, who has a double portion. The practick betwixt the Fiar and Liferentrix of Airdrie is alien from the purpose ; for there the liferentrix was assailed from alimenting the heir ; not only because at the constituting her liferent, there was a sufficient separate estate to maintain him, but also because he had no blood-relation to her.

THE LORDS modified an aliment to L. 50 Sterling to the pursuer, whereof L. 30 should be paid by the eldest son, and L. 20 by the second.

Fol. Dic. v. 1. p. 33. Forbes, p. 425.

1678. February 8. CLELAND and GEDDES *against* GEDDES.

A PURSUIT at a mother's instance against Kirkurd, for her daughter's aliment, and for making her own jointure six chalders yearly. *Alleged* to the *first*, He is content of a modification with respect to his debts : To the *second*, She possesses six chalders of Linlithgow measure already.—*Replied*, The lands lying in Tweedale, she must have two pecks of each boll more conform to that measure, and the act 115th Ja. 6th, *anno* 1587, reducing all to the Linlithgow measure, contains an exception in favours of the masters of the ground, to whom their tenants are ordained to pay according to their old measure ; and this being anent a ground duty, it falls under that exception.—THE LORDS found the foresaid clause behoved to be understood conform to the exception in the act of Parliament ; and since the child had 10,000 merks provision, they modified 200 merks, being the third part of her annualrent, for her aliment, till she were seven years old ; and half of her annualrent, viz. 300 merks, from that to ten ; and two parts of her annualrent, viz. 400 from that till fifteen years of age, which was the term of payment of her provision. This is the common rule of modification in all

No 83.

Rules for the modification of the aliment, due *ex jure naturæ*.

(E^s debito naturali.)

No 83. cases where respect is had always to the child's provision ; and the LORDS regarded not that she was heir of line.

Fol. Dic. v. 1. p. 33. Fountainball, MS.

Endurance of
aliment.

* * * The endurance of aliment depends entirely on circumstances.—Where the family was not of high rank or of opulent estate, the aliment of daughters has been found to be due till majority or marriage, whichever event should happen first. But where the heir enjoys a considerable estate, and represents a family of dignity, as the daughters could not be supposed to earn their subsistence, at service, or in trade, their claim of aliment would continue even after majority, till marriage. See Biffets against Biffets, No 48. *supra*.

1788. December 14.

No 84.

ELISABETH DALZIEL, and her Tutor *ad litem*, against ROBERT DALZIEL.

IN a question between these parties, it had been determined, that the defender, who had succeeded to his father in an opulent family-estate, was obliged to maintain the pursuer, his niece by an elder brother deceased.

The next question was, How long this alimony should continue; the defender contending, that it ought to cease as soon as the pursuer was able to earn her living, by her own industry.

THE LORDS, however, found; That, in the circumstances of this case, ' the pursuer was entitled to L. 30 per annum during her life, or till her marriage.'

Lord Reporter, *Monboddo*. A^{ct}. *M. Ross*. Alt. *Honyman*. Clerk, *Home*.

Fol. Dic. v. 3. p. 26. Fac. Col. No 50. p. 89.

Craigie.

* * * The circumstance which chiefly induced the Court, in this case, to appoint the aliment to continue *after majority*, was, that the pursuer was the grand-child of the representative of a family of such dignity, that although she was the issue of a clandestine marriage, with an obscure woman, yet it was inconsistent with the honour of the family, to permit her to be in a situation, in which she might be under the necessity of engaging in some mean employment for her subsistence. This was consistent with former decisions, where such a circumstance had occurred, See No 48. &c.—These cases were quoted in the argument.