

(Ex debito naturali.)

No 57.  
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by being  
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constitute an aliment for him during his furosity, according to their means and estate, which therefore must affect all representing them.—The defender *answered*, That the law and custom of Scotland hath only extended aliment of children against fathers personally, and never against mothers, nor against any representing either. *2do*, This aliment being bestowed upon the furious person by his own sister, without any agreement, must be presumed to be of charity and natural affection, and introduces no obligation, especially having continued 14 years after the death of both parents; and if it had been otherways intended, the pursuer ought to have required the defender to have accepted of the furious person in her family, and could not crave a modification to entertain him elsewhere.—The pursuer *answered*, That the Lords had made this natural obligation effectual, not only against fathers, but against mothers, where the father left no means, as was found in the case of the Children of E. Buchan *contra* the Countess of Buchan, No 45.; and also against the heirs, as was found in the case of the Children of Otter, No 49. and Netherlie against the Heirs thereof, No 50. And albeit the Lords has found that the entertainment of persons who can contract, is presumed gratuitous, unless there be an agreement, yet it is neither extended to pupils nor furious persons, who can make no act nor agreement for themselves.

THE LORDS sustained the process, and ordained a modification according to the means of the father and mother, whereunto the defender succeeds, and only in so far as she is *lucrata*, by being freed of entertaining the furious person in her own family.

*Fol. Dic. v. 1. p. 32. Stair, v. 2. p. 639.*

\* \* \* Fountainhall states the same case thus:

WILLIAM THOMSON pursues Agnes Wilkie for paying him the aliment of her brother, who was fatuous.—*Alleged*: As representing her father, she was not liable, because his obligation, *jure naturæ*, died with himself, nor as representing her mother, *non tenetur alere*; and, as sister, the pursuer was as much concerned, having married another sister; and it is presumed he did it *ex officio pietatis*; and, in law, a sister is not bound to entertain her brother.—THE LORDS found his father should have provided him, since he was not capable to serve or work; and, therefore, found the defender, as representing the father and mother, bound to aliment him, *secundum vires hereditatis*.

*Fountainhall, MS.*

1697. January 13.

DON of Attenburn against DON.

No 58.  
Younger  
children al-

THE younger children of Mr Patrick Don of Attenburn, pursue their elder brother for an aliment, on this ground, That their father had left them nothing

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by any bond of provision; and the estate being opulent, about 9000 merks of yearly rent, it was just they should be alimeted; and craved two periods to be fixed; one to 14, and the other from that age to 21; for the first, 600 merks *per annum*, was craved to be modified for each of them; and after 14, 800 merks.—THE LORDS remembered, that in the case of Jacobina Inglis, daughter to Crammond, in 1691,\* the Lords would go no farther than her age of 12; therefore they allowed 600 merks yearly to each of them; the boys till 14, and the girls till 12.

*Fol. Dic. v. 1. p. 32. Fount. v. 1. p. 754.*

1705. July 14.

PATRICK M'DOWALL, Merchant in Edinburgh, against Mr JOHN MARSHALL.

IN a purfuit before the bailies of Edinburgh, at the instance of Patrick M'Dowall, against Mr John Marshall, for payment of an account of mournings, furnished, by his order, to himself and his brother and sisters, at their father's death, extending to L. 96 Scots; the bailies having found it relevant to make the defender liable, that the account was furnished by his order; or that his father delivered to him a sum of money for defraying the expence of the mournings; albeit the defender was minor when the goods were furnished, and lesed by engaging for them, and had raised reduction *intra annos utiles*: The defender brought the cause before the Lords, by advocacy, upon this ground, That the bailies had committed iniquity; in so far as a minor's interposing himself for others to take off mournings for them is lesion; and it doth not alter the case, that he received money for that end from his father; seeing money given to a minor is understood to be given *perdituro*, unless it appear to have been *in rem versam*, profitably employed, or that he hath it still in his hand.

*Answered*: There was no iniquity committed; because, 1<sup>mo</sup>, Mr Marshall being at the full stature of a man, and graduate, it was not possible to know, by his aspect, that he was minor: And his inducing a merchant, by concealing his age, to trust him goods, could not profit him. Besides, he was *in confinio majorrennitatis*, wanting only some months of being major at the time. 2<sup>do</sup>, He having taken off the mournings, the merchant was not bound to know whether he was to employ them for the younger children *in familia* with him, or for himself; no more than if he had taken off a suit of clothes to himself, and another to his servant; which could never have been interpreted lesion, though there were no obligation upon him to cloath his servant in blacks. And, 3<sup>tio</sup>, Albeit the pretence that money given to a minor is given *perdituro*, may hold in the general; yet there seems to be a specialty in this case, where the money was given by a dying father to his eldest son, to furnish mournings to himself and the younger

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\* General List of Names.