

(Ex debito naturali.)

No 61.

ried sister could crave no aliment from her brother. Some thought, if she had been living separate from her husband, there might have been some more pretence. Then Agnes, the unmarried sister, craved an aliment to be modified to her.—*Answered*, *imo*, You are major and past twenty-one, and so can claim no aliment, but should, by some virtuous course, provide for yourself. *2do*, You deserted my house, and suffered your brother-in-law to over-reach you, in disposing all you can claim for your portion to him. *3tio*, I am willing to take you back and maintain you honourably, conform to your birth; and, in regard the surmises her return may be uneasy and uncomfortable to her, because of her disobligations, he is content she reside with any of her sisters or aunts, to whom he shall pay such a competent aliment as the Lords shall determine. *Replied*, She being now *sui juris*, cannot be confined to a particular place, but has the choice where she thinks fit to live.—THE LORDS thought the brother's offer reasonable, and therefore allowed her to chuse any of the friends named, for the place of her residence, in which case they would modify an yearly aliment to her, during the dependence of the process betwixt them: But if she refused, and would rather stay where she is, then they would assilzie her brother from any aliment.

*Fol. Dic. v. 1. p. 32. Fount. v. 2. p. 641.*

1715. July 23.

THE CHILDREN and RELICT of FORBES of Knaperny, *against* FORBES.

No 62.

An heir succeeding to a competent estate, as heir to his father, found liable to aliment his brothers and sisters, unprovided for.

THE deceased Knaperny left a considerable land estate, and free executry; and having five younger children, four of whom were unprovided for at his death; their elder brother, before he elected curators, grants them bonds of provision, bearing annualrent from the term preceding their dates; and declaring, that the said sums are in full satisfaction for bairns part of gear, portion natural, legitim, &c.; and then having elected curators, he is confirmed executor to his father. But the four younger children being thereby unprovided in the interim, intended an action of aliment, libelling upon the foresaid bonds of provision. To which the defender and his curators *answered*, That the bonds were null, as being granted without consent of curators.—*Replied* for the pursuers, That the bonds were not libelled upon as the *medium concludendi*, (which was founded upon the natural obligation, and *frater dives tenetur alere, &c.*) but only as a view or meith for the quantity of the aliment. (See ELPHINGSTONS *against* ELPHINGSTON, *infra, b. t.*)

THE LORDS found aliment due.

*Act. Elphingston.*

*Clerk, Robertson.*

*Fol. Dic. v. 1. p. 32. Bruce, No 127. p. 167.*