

(Ex debito naturali.)

1748. December 13.

The YOUNGER CHILDREN of Bisset of Lessindrum against Their BROTHER.

THE late Lessindrum died, having seven daughters, and one son, the present Lessindrum, without making any provision for his said daughters, who brought a process of aliment against their brother, a minor.

The estate was free, but small; about L. 212 Sterling of yearly rent, after all deductions, whereof L. 94 was liferented by the mother.

In this situation, the LORDS superded to determine, till the mother should be made a party; and she being brought into the field, and it appearing that one of the seven daughters was past majority, the LORDS modified L. 11 : 2 : 2 $\frac{2}{7}$ yearly to each of the remaining six daughters, who were under age; for L. 46 whereof and a fraction, the heir was found liable, and for the remainder, being L. 20 and a fraction, the widow was found liable; by which distribution, a small matter only remained free to the widow, more than was free to the heir. And this aliment was found to continue till the majority or marriage of the daughters, whichever should first happen; and the heir and relict were found liable in the expence of process in the same proportion.

Had the heir been possessed of an opulent estate, as the obligation upon him to aliment his brothers and sisters is a civil obligation, as representing his father, it is likely that no part of it had been laid upon the widow; but, as the circumstances of the heir were narrow, and the widow's provision large for the estate, it was thought more equitable to lay a part of the aliment upon her. And as for the endurance, the LORDS here varied the period fixed in the case of the Younger Children of Sir William Douglas in 1739, No 63. *infra*, where the aliment of the daughters was determined to continue till their marriage; though this is a matter that may be also thought to depend upon circumstances. Suppose an heir to enjoy an opulent estate, and to represent a family, with the dignity of which it could not well consist that the daughters should go to service, marriage would still seem to be the proper period for the endurance of the aliment.

Fol. Dic. v. 3. p. 23. Kilkerran, (ALIMENT.) No 4. p. 23.

* * * The same case is thus stated by D. Falconer:

THE daughters of the deceased James Bisset of Lessindrum, pursued Alexander their brother, and heir to their father, for an aliment, they being minors and unprovided.

THE LORDS appointed the mother to be summoned; for whom it was *pleaded*, That though she was obliged to aliment *super jure natura*, yet the burden was to be laid preferably on the father's heir in his estate.

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The mother found liable for a proportion of the aliment of younger children.

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THE LORDS, considering that the heir was minor, and no appearance made for him, enquired into the circumstances of the estate; and modified an aliment, which they proportioned on the heir and liferentrix, as to them appeared equitable.

Act. and for the mother, *H. Home.*Alt. *Absent.**D. Falconer, v. 2. No 20. p. 23.*

** Lord Kames reports the same case thus:

BISSET of Leffindrum died without making any settlement, leaving a son who was his heir, and seven daughters, all under age. He had a free estate of L. 2556 Scots yearly, beside an heritable debt of 4000 merks upon the estate of Errol, without leaving moveables more than sufficient to satisfy what small debts he owed. The relict liferented L. 1128 yearly. By her advice, with the consent of the curators of the heir, a process for aliment was raised in the name of the seven daughters; and the only question was, Whether the whole aliment should be laid upon the heir, or the relict bear a part? Several decisions were cited for the mother, *Gilmor, p. 56. January 1663, Stirling contra Laird of Otter**, *Stair, v. 2. p. 1. 10th November 1671, Hastie contra Hastie, No 53. infra*; *Stair, 5th July 1677, Children of Lawriston contra the Heir, No 55. infra*, burdening the heir only, and not the mother. And in support of this, it was declared for the mother, to be her fixed purpose to save what she could of her jointure for a provision to her children; and that, to load her with any part of the aliment, would have no other effect than to relieve the heir, without profiting the other children. As this matter was submitted to the Court without opposition from the heir; it was *observed*, That the heir indeed is primarily liable as representing his father; but that if his estate do not afford a sufficient aliment for himself, as well as for the other children, which was the present case, the deficiency must be made up by the mother, who is liable, *secundo loco*, to maintain her children. And accordingly L. 64 Sterling was modified in name of aliment, whereof L. 20 to be paid by the mother.

*Rem. Dec. v. 2. No 99. p. 178.*1663. *January 8.* Lady OTTER *against* Laird of OTTER.

No 49.

The heir is liable to aliment his brothers and sisters. A bond of provision being granted to a daughter, payable at a

THE unquhile Laird of Otter, by his contract of marriage, having provided his estate to his heir-male, provided 5000 merks to his eldest heir-female, when she should be capable of marriage; and an occasion offered; whereupon the said heir-female, her mother, pursues the heir-male for payment of the sum, and for payment of an aliment to the heir-female, during the time she hath been with her mother, and in time coming, till the provision be paid.—The defender

* See *Deuatio non presumitur*, in Title PRESUMPTION.