

(Ex debito naturali.)

The pursuer *answered*, That the annualrent of the portion is by no means the measure of the obligation. On the contrary, the obligation to aliment and educate, is put in place of the annualrent, as what is understood to require more than the annualrent can afford. And certain circumstances were condescended on to show such to have been the intention of it, in this case, with respect to the pursuer; particularly that his deceased father had, some months before his death, sent him to Dublin for his education, at the University, with a governor attending him; an education which could not be defrayed by the double of the annualrent of his portion, which was no more than his share of the sum of L. 800, as one of four children.

Upon this debate, it appeared to be the opinion of the Court, that the obligation to aliment and educate would receive a different construction, according to the circumstances of the estate left to the heir, and extent of the portion; so that in some cases, the claim for education might exceed the annualrent of the portion; and in others not even extend to so much: And, in this case, the Lords would, in respect of the above circumstance, have given a further sum, but for a new fact advanced by the defender at advising, and which the doers for the pursuer could not refuse, That the pursuer had a separate estate of his own, left him by a friend; which the LORDS 'found to be a good defence, and absolved the defender.'

Fol. Dic. v. 3. p. 24. Kilkerran, (ALIMENT.) p. 23.

1754. January 25.

MARGARET ANDERSON and RACHEL GIBSON, *against* JAMES GIBSON and his Curators.

JAMES GIBSON having succeeded as heir to his grand-uncle John Jack, James Gibson's mother, Margaret Anderson, and his sister Rachel Gibson, brought a process against him and his curators for an aliment.

The defender admitted, that an aliment was due to his mother; but contended, That his sister, who was past 21 years of age, had no legal claim against him for an aliment.

Pleaded for Rachel Gibson: That by the civil law, persons who are able, are bound to aliment their brothers and sisters who are in want; l. 1. § 2: *ff. De tutel. et ration. distr. l. 13. § ult. ff. De admin. tut. and Voet, ab tit. De agn. et alend. liberis*: And as this obligation is founded on the law of nature, and proceeds *ex æquitate et charitate sanguinis* betwixt brothers and sisters, it ought to take place with us; and so it has frequently been decided, particularly 10th November 1671, *Hasty contra Hasty*, No 53.; and 23d July 1715, *Children of Knapperny* against their elder Brother, No. 62.

No 64.

No 65.

A person succeeded to the estate of a distant relation. His mother and sister being poor, claim aliment. He admits the mother's claim. The sister, who was past 21, found not entitled.

(Ex debito naturali.)

No 65.

Answered for James Gibson and his curators: That although he would be very ready to relieve his sifter when in need, yet he is under no legal obligation to aliment her. The texts cited from the civil law, only permit tutors and curators to make reasonable debursments out of the pupils or minors estates, for the education and maintenance of unprovided brothers and sisters, but by no means make it necessary for the minor or his curators to make such debursments. And all the decisions of this Court, whereby a brother has been found obliged to aliment his brothers and sisters were, upon this foundation, that he, as heir to his father, was liable to the same obligations to which his father was liable; and therefore to aliment the children of his father. And even in such cases, the obligation reached no farther than to aliment them during their pupillarity, or at farthest minority. But, in the present case, the defender does not represent his father, but succeeded to his grand-uncle, who was under no obligation to aliment the pursuer Rachel Gibson, and she is past the years of minority.

‘THE LORDS found, That Rachel Gibson was not entitled to an aliment.’

Agt. *Dav. Dalrymple.*
Bruce.

• *Alt. Dav. Rae.*
Fol. Dic. v. 3. p. 23.

Clerk, *Kirkpatrick.*

Fac. Col. No 97. p. 147.

1758. December 18.

AGNES LOGAN, and Younger CHILDREN of Hugh Campbell, *against* his ELDEST SON.

No 66.

A deed executed on death-bed, to the prejudice of the heir, contained an appointment to pay an annuity to the widow, and provisions to the children. Although the deed was reduced, the heir obliged to pay a competent aliment to the widow and children.

HUGH CAMPBELL purchased the lands of Peneloe, in a country parish, from his brother Andrew, for 19,600 merks. He paid the price; received a disposition; but no infestment followed. This purchase exhausted all the fortune he had.

Six months after, Hugh being upon death-bed, and seeing that he had no other fund for a provision to his wife and younger children, cancelled the disposition; took an obligation from Andrew to sell the lands for behoof of Hugh and his heirs; and then made a provision of 300 merks yearly for Agnes Logan his wife, and 11,000 merks among his three younger children; 8000 merks of which was payable at his own decease, and 3000 at the decease of his wife.

The heir having brought, and succeeded in, a reduction of this transaction, so far as regarded the provisions made for the younger children, the younger children next brought a process of aliment against him, and the widow likewise insisted for payment of the provision made for her.

‘THE LORDS restricted the annuity provided to the widow to 200 merks, and modified the aliment to be paid to the younger children to 250 merks yearly, to be divided equally amongst them, so long as they all remain minors; and after the majority of the eldest, to the other two, equally betwixt them, so long as