

*(Ex debito naturali.)*

No 65.

*Answered* for James Gibson and his curators: That although he would be very ready to relieve his sister 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

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they continue both minors; and after the majority of the two eldest, to the remaining one, so long as he or she shall remain minor; and failing of any one or more of them, by decease in minority, to the survivors equally, or to the survivor. And found, That so soon as the relict's annuity should cease by her death, the aforesaid aliment of the children should be increased 100 merks yearly, to be divided, subsist, and terminate, in the same manner with the original aliment.

Act. Jo. Dalrymple.

Alt. Burnet.

Fol. Dic. v. 3. p. 23. Fac. Col. No 147. p. 264.

No 66.

1761. June 25.

MRS MARGARET SETON, Relict of John Paterfon, Younger of Eccles, and ELLIOT and KATHARINE PATERSONS, her Daughters, against SIR JOHN PATERSON of Eccles.

JOHN PATERSON, younger of Eccles, married Mrs Margaret Seton, the pursuer, without the consent of his father Sir John.

During the son's life, Sir John allowed him an aliment of 1200 merks a-year; but John the son having died in the 1742, Sir John withdrew the aliment altogether from the widow and seven children, whom his son had left behind. Some time thereafter, two of the sons having died, he took home the two remaining to his own family, and was prevailed on to settle a small annuity of 500 merks yearly, as an aliment for the widow, and Elliot, Katharine, and Margaret Paterfons, her three daughters, to be restricted to 400 merks, in case of the death or marriage of any of the three young ladies: And in the event of the mother's marriage or death, he binds himself to pay to each of the three daughters, the sum of 100 merks yearly for their necessary support, &c. while unmarried.

Sir John Paterfon, son to the pursuer Mrs Margaret Seton, upon the death of old Sir John, his grand-father, took his sister Margaret entirely off her mother's hand, and augmented the yearly annuity to L. 40 Sterling.

The Lady, and her two daughters Elliot and Katharine, brought an action against Sir John Paterfon, concluding that he should be decerned to make payment to his mother of an yearly aliment of 2000 merks, and 500 merks to each of his two sisters.

*Pleaded* upon the part of the mother, That the action was founded *super jure naturæ*, and upon that renunciatory obligation, to recompence the pursuer for the support and entertainment of the defender in his infancy, which can neither be renounced nor cancelled.

*Pleaded* for the two sisters, That if old Sir John their grand-father had been alive, he would certainly have been liable to aliment them; and if that was so, so must their brother who represents him. If they had obtained bonds of provi-

No 67.

Aliment due to a mother, *super jure naturæ*; but sisters not entitled to an aliment, where the brother does not represent their father.