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. No 66.

Act. *Jo. Dalrymple.* Alt. *Burnet.*

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

1761. *June* 25.

MRS MAGARET SETON, Relict of John Paterſon, Younger of Eccles, and ELLIOT and KATHARINE PATERSONS, her Daughters, *againſt* SIR JOHN PATERSON of Eccles.

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.

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 Paterſons, 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 Paterſon, 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 Paterſon, 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. sion, the grant whereof was not payable till their marriages; the Court, agreeable to many deciſions, would have found them entitled to an aliment; and as the obligation is rather ſtronger where daughters are not provided at all in a portion, the ſame principle of equity ought to be extended to their caſe; 8th February 1739, Douglas, No 63. *ſupra*, the Court found the obligation to aliment ſiſters.

The defender, Sir John Paterſon, did not ſeem to deny that a ſon was bound to aliment a mother who was altogether unprovided; but he *pleaded*, That the aliment which ſhe already enjoyed, and which he offered to encreaſe, for behoof of herſelf and his ſiſters, to L. 50 Sterling, was ſufficient to bar any further claim of aliment, *ſuper jure naturæ*; becauſe her claim had no other foundation, but the natural obligation of a child to aliment and maintain his parent, when deſtitute and unprovided; but the aliment ſhe already enjoyed, with the addition offered, was ſufficient to maintain herſelf and her two daughters decently, in a cheap part of the country.

With regard to the two young ladies' claim, the defender *pleaded*, That the law of this country had not extended the obligation to aliment *ex pietate*, to the caſe of brothers and ſiſters. Caſes have indeed occurred, where younger children being left unprovided by their father, action has been ſuſtained againſt the elder brother, who ſucceeded to the father's eſtate, for an aliment to his brothers and ſiſters. But, in theſe caſes, the obligation was not founded *in pietate*, or upon the natural obligation upon one brother to aliment another, but upon the father's obligation, who was bound *ex jure naturæ*, to aliment his children, which the elder brother, as his repreſentative, was bound to perform; but as the defender's father had no eſtate, the defender does not repreſent him, and therefore he cannot be liable in this claim of aliment to his ſiſters.

It was alſo *argued*, That the natural obligation upon parents to aliment their children, did not go beyond thoſe of the firſt degree; was it to go farther, there would be no knowing where to ſtop.

The purſuer's progeny might multiply beyond number; and were they as many hundreds as they are now ſingle perſons, the claim would be the ſame. If Sir John the elder was bound to aliment his grand-children, he was equally bound to aliment their children; and ſo, from one generation to another, to the end of the chapter; and if the defender, as repreſenting him, was under the like obligation, he, nor any man living, could know what a load he might be ſubjected to.

The Lords found, 'That the daughters were not entitled to an aliment, and therefore aſſoilzied the defender as to them; but found the mother entitled to an aliment *ſuper jure naturæ*, and therefore ordained a condeſcendence of the defender's eſtate to be given in.

Act. *D. Dalrymple.* Alt. *Lockhart.* Clerk, *Gibſon.*

Fol. Dic v. 3. p. 23. Fac. Col. No 44. p. 96.