

(Ex debito naturali.)

No 80. But a second reclaiming petition being preferred, which was followed with answers, the LORDS found, 'That the pursuer was entitled to an aliment, and to the expence of the process of reduction, till the date of the final interlocutor, repelling the reasons of reduction.'

Mr Jardine reclaimed; but his petition, after being advised with answers, was refused.

Lord Ordinary, *Hales.* Aft. *Wight, Stewart.* Aft. *Lord Advocate, Blair.*
Clerk, *Menzies.*

Fol. Dic. v. 3. p. 25. Fac. Col. No 60. p. 109.

Craigie.

1741. February. CAMPBELL against His FATHER.

No 81.

Foris-familia-
tion does not
preclude the
claim for ali-
ment.

THE LORDS found that *foris-familia*tion did not exclude a claim of aliment *super jure natura*.

Fol. Dic. v. 3. p. 22. Kilkerran, (ALIMENT.) No 5. p. 22.

1710. July 20.

MR ALEXANDER BROWN of Thornydikes the Elder, against GEORGE BROWN his Eldest, and ALEXANDER BROWN his Second Son.

No 82.

Children
bound to ali-
ment their
parents.

OLD Thornydikes having, after providing George, his eldest son, in his contract of marriage, to L. 100 Sterling yearly during his own lifetime, and to the fee of the lands of Thornydikes, disposed the lands of Bassindean to Alexander his second son, in his contract of marriage; whereby the old father, denuded of all, and reduced to extreme want and misery through his exuberant fondness for his children, was necessitated to pursue a process of aliment against them: Founding his claim upon the law of nature and nations, That obligeth children to maintain their indigent parents, though they got nothing from them; and much more obligeth the defenders to allow *beneficium competentiae* to their aged father, who divested himself of his all in their favours, *L. 5. §. 2. ff. de agnoscendis et alendis liberis et parentibus, L. 1. eodem.*

The defenders did not much controvert the pursuer's title to an aliment, but each of them endeavoured to free himself of the burden, by throwing it over upon the other.

Alleged for the eldest son: He could be liable to no part of his father's aliment, till the lands of Bassindean, disposed to the second son, be first discussed; because, when the eldest son got the lands of Thornydikes disposed to him, his fa-

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ther retained a competency to subsist himself and his family ; and it was by his posterior disposition to the second son, that he was reduced to misery and the want of bread ; which *beneficium ordinis* is agreeable to the decision, 7th January 1682, Hamilton fiar of Airdrie, *contra* Hamilton, No 8. *supra*.

No 82.

Answered for Alexander Brown the second son : Both their dispositions from their father, are *in pari casu*, and upon a level, except that the subject disposed to Alexander is scarce the half of what the eldest son got. The pretence that the second son should be discussed before the eldest, is altogether imaginary, and without any foundation ; seeing the tie upon children to aliment their parents, is not founded so much upon positive law, as upon the law of nature, whereby there is no order of discussion among those of the same degree ; who, being equally near in point of relation, are liable *pro rata* according to their abilities and circumstances. And if any *beneficium ordinis* were competent, it would turn the burden in the first place upon the child that enjoys most of the parent's means, and consequently upon the eldest son in this case, who has a double portion. The practick betwixt the Fiar and Liferentrix of Airdrie is alien from the purpose ; for there the liferentrix was assailed from alimenting the heir ; not only because at the constituting her liferent, there was a sufficient separate estate to maintain him, but also because he had no blood-relation to her.

THE LORDS modified an aliment to L. 50 Sterling to the pursuer, whereof L. 30 should be paid by the eldest son, and L. 20 by the second.

Fol. Dic. v. 1. p. 33. Forbes, p. 425.

1678. February 8. CLELAND and GEDDES *against* GEDDES.

A PURSUIT at a mother's instance against Kirkurd, for her daughter's aliment, and for making her own jointure six chalders yearly. *Alleged* to the *first*, He is content of a modification with respect to his debts : To the *second*, She possesses six chalders of Linlithgow measure already.—*Replied*, The lands lying in Tweedale, she must have two pecks of each boll more conform to that measure, and the act 115th Ja. 6th, *anno* 1587, reducing all to the Linlithgow measure, contains an exception in favours of the masters of the ground, to whom their tenants are ordained to pay according to their old measure ; and this being anent a ground duty, it falls under that exception.—THE LORDS found the foresaid clause behoved to be understood conform to the exception in the act of Parliament ; and since the child had 10,000 merks provision, they modified 200 merks, being the third part of her annualrent, for her aliment, till she were seven years old ; and half of her annualrent, viz. 300 merks, from that to ten ; and two parts of her annualrent, viz. 400 from that till fifteen years of age, which was the term of payment of her provision. This is the common rule of modification in all

No 83.

Rules for the modification of the aliment, due *ex jure naturæ*.