

PARENT AND CHILD.

1678. December 20.

STRACHAN against PATRICK STEWART, Town-clerk of Banff.

A FATHER is pursued for a sum furnished to his son. *Alleged* he was forisfami-
 liate, and entering an advocate, and this lending is *contra S. C. Mace-*
donium. THE LORDS found he was liable to have alimeted his son according
 to his quality and estate, so far as the son could not entertain himself by his
 own industry, and that he was not totally forisfamiate; and therefore ordain-
 ed the pursuer to prove the sum was furnished for aliment and the worth of
 the father's estate, that they might modify accordingly.

Fol. Dic. v. 2. p. 25. Fountainhall, MS.

No 1.

1685. November 27.

JEAN ROBERTSON against Her Father's HEIRS, or M'INTOSH against ROBERTSON.

JEAN ROBERTSON having pursued her father's heirs, for payment of 500
 merks in legacy to her by John Robertson, which was uplifted by her father
 as administrator in law to her. The defender *alleged* absolvitor, because the
 pursuer's father in her contract of marriage with her husband, contracted 5000
 merks with her, which ought to be ascribed *pro tanto* in satisfaction of the said
 legacy. It was *answered*, That her father was obliged to pay her tocher albeit
 he had not been her debtor the manner libelled, and that he had only tochered
 her suitably to his own estate, he being a gentleman of 2000 merks of rent.
 It was *replied*, That albeit by the Roman law, the father was obliged to tocher
 his daughter, yet there was no obligation by our law upon the father to tocher
 his daughter; and that therefore, what he had given, was to be imputed and
 ascribed in payment of his debt in the first place, seeing *debitor non præsumitur*
donare. It was *duplicated*, Whatever might be said if the father had granted a
 bond of provision to his daughter, that the tocher might be ascribed in satisfac-
 tion thereof; yet in this case, where the legacy was adventitious, proceeding

No 2.

Though, by
 the Roman
 law, the father
 was bound to
 tocher his
 daughter, yet
 the Lords
 found it other-
 wise by the
 law of Scot-
 land.