

(Ex debito naturali).

by any bond of provision; and the estate being opulent, about 9000 merks of yearly rent, it was just they should be alimeted; and craved two periods to be fixed; one to 14, and the other from that age to 21; for the first, 600 merks *per annum*, was craved to be modified for each of them; and after 14, 800 merks.—THE LORDS remembered, that in the case of Jacobina Inglis, daughter to Crammond, in 1691,\* the Lords would go no farther than her age of 12; therefore they allowed 600 merks yearly to each of them; the boys till 14, and the girls till 12.

*Ed. Dic. v. 1. p. 32. Fount. v. 1. p. 754.*

1705. July 14.

PATRICK M'DOWALL, Merchant in Edinburgh, against Mr JOHN MARSHALL.

IN a purfuit before the bailies of Edinburgh, at the instance of Patrick M'Dowall, against Mr John Marshall, for payment of an account of mournings, furnished, by his order, to himself and his brother and sisters, at their father's death, extending to L. 96 Scots; the bailies having found it relevant to make the defender liable, that the account was furnished by his order; or that his father delivered to him a sum of money for defraying the expence of the mournings; albeit the defender was minor when the goods were furnished, and lesed by engaging for them, and had raised reduction *intra annos utiles*: The defender brought the cause before the Lords, by advocacy, upon this ground, That the bailies had committed iniquity; in so far as a minor's interposing himself for others to take off mournings for them is lesion; and it doth not alter the case, that he received money for that end from his father; seeing money given to a minor is understood to be given *perdituro*, unless it appear to have been *in rem versam*, profitably employed, or that he hath it still in his hand.

*Answered*: There was no iniquity committed; because, 1<sup>mo</sup>, Mr Marshall being at the full stature of a man, and graduate, it was not possible to know, by his aspect, that he was minor: And his inducing a merchant, by concealing his age, to trust him goods, could not profit him. Besides, he was *in confinio majorrennitatis*, wanting only some months of being major at the time. 2<sup>do</sup>, He having taken off the mournings, the merchant was not bound to know whether he was to employ them for the younger children *in familia* with him, or for himself; no more than if he had taken off a suit of clothes to himself, and another to his servant; which could never have been interpreted lesion, though there were no obligation upon him to cloath his servant in blacks. And, 3<sup>tio</sup>, Albeit the pretence that money given to a minor is given *perdituro*, may hold in the general; yet there seems to be a specialty in this case, where the money was given by a dying father to his eldest son, to furnish mournings to himself and the younger

No 58:  
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No 59:  
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\* General List of Names.

(Ex debito naturali)

No 59.

children, partly taken off before the burial, and partly within a day or two after, while the money could not possibly be misapplied.

*Replied:* The allegiance, that the minor, by his aspect, looked to be major, deserves no answer. Nor was it ever sustained that a minor was *in dolo* for concealing his age, and not telling that he was minor; the legal exception being *si majorem se dixerit*, and not *si minorem non dixerit*. And it cannot be termed dolo in a minor, not to tell that he was under age, when such a question was never put to him. *2do*, It is contended, that one who deals with a minor, and furnishes him goods, is in law obliged to know for what and for whose use they are, otherwise he trusts upon his peril.

THE LORDS repelled the reason of advocacy, in respect of the answers; and found the minor liable, though the furnishing was not made to himself, but to his brothers and sisters; and therefore remitted the cause. (See MINOR.)

*Fol. Dic. v. 1. p. 32. Forbes, p. 26.*

1711. February 2.

SOMERVELLS against L. DRUM.

No 60.

The Lords allowed younger children unprovided, an aliment from the heir; and they having no tutors, their relations, among whom they were distributed, were found adequate to receive the money and discharge the heir.

THE deceased James Somervell of Drum, having left five children, besides the heir, and none of them provided, in respect of his sudden death; and being all young, they pursue their elder brother, who succeeded to the estate, not indeed for portions, (for that our law has not yet allowed) but for an aliment till their majority; for, where an heir succeeds to a plentiful estate, the Lords have burdened him with alimentering his brethren and sisters *ex obligatione juris naturalis*, 24th January 1663, Edgars against their eldest Brother, No 54.; and 10th November 1671, Hasty No 53.; which continues till they be bred up in an employment; or, if mean people, to go to service; but cannot exceed the expiring of their minority.

THE LORDS having taken a summary cognition of the value of the estate, and burdens affecting it, they found it betwixt 4 and 5000 merks by year, with some debt; and therefore modified only 1500 merks of aliment yearly for all the five; but did not allow every one of them equally, but according to their ages, less till they came to ten or twelve years old, and then more; as they did in Jacobina Inglis's aliment against Sir John Inglis of Cramond, her brother.\* But the difficulty arose who should uplift it, and give the heir a valid discharge. They represented, that for them to take out a gift of tutory from the Exchequer, would exhaust a great part of their aliment; neither would any be tutors, having nothing to manage but this small modification. Therefore, an expedient was offered, that the friends of the father's and mother's side had concerted amongst them, to divide the children, and each of them to take one into their family; and they were willing to discharge the heir on his paying their several proportions; and to give bond to apply it to their aliment and education, and to hold count for the same at their respective majorities; their design being to spare as much of their

\* General List of Names.