

## SECT. II.

Where there could be no opportunity of Paction, Donation is presumed or not according to circumstances.

1624. February 3. LADY MONGREENAN *against* LD BLAIR.

No 105.

A MINOR'S mother pursued the tutor for several years aliment. Although the minor, during these years, had nothing of his own, because of a grandmother liferenter, then alive; yet, after her death, the minor having come to his own, action was sustained to the mother entertainer, for all the preceding years.

*Fol. Dic. v. 2. p. 142. Spottiswood.*

\* \* \* This case is No 23. p. 8918.

No 106.

Aliment to a daughter found due to a mother by an extraneous heir. The *pietas materna* held to have no weight in such a case.

1663.

STIRLING *against* The LAIRD of OTTAR.

By contract of marriage betwixt umquhile Archibald Campbell of Ottar and Anna Stirling, the lands are provided to the heirs-male of the marriage; and if there be but one daughter, she is provided to 6000 merks payable by Ottar's other heir-male when she should be fit for marriage, and an occasion should offer. There being but only one daughter of that marriage, whom the mother hath alimented since the husband's death *in anno* 1651; the mother pursues this Ottar, brother and heir-male to the said deceased Archibald, for the daughter's aliment since the said year, and the daughter pursues for payment of the said 6000 merks. Against the aliment it was *alleged*, There is none due *de pacto*, by the contract of marriage, nor by law, and the mother must be presumed to have alimented her daughter *ex affectu naturali*. It was *answered*, That there was upon the father, if he had been alive, a natural obligation to maintain his daughter; so his heir succeeding to his fortune is obliged naturally to that same duty; and the mother is not presumed *ex suo* to aliment her daughter where there is a natural obligation lying upon any other, who has whereupon to discharge that obligation abundantly; and though, according to the usual form, the writer has neglected in the contract a clause for alimenting the daughter; yet seeing nature obligeth to the thing, and there is an estate whereupon to do it, the judge ought to decern accordingly. To the other part of the libel it was *alleged*, That the term of payment of the tocher comes not till the occasion of a marriage offer, and the sum returns back failing of her by decease without heirs of her body. It was *answered*, That the daughter was now marriageable, and so long as the money were in the power of the uncle, it would be an impediment of matches to her; whereas, if the money were out of his hands, and