

without mentioning any claim of debt he had against him; and thereafter Bairdie granted a ticket to Steedman, bearing, That he was resting to him, after counts cleared in his books, L. 36 Scots, which he obliged him to pay to him upon demand; whence it follows, That Mr Bairdie never reckoned Mr Steedman's son's aliment a debt upon him. No 102.

*Replied* for Chisholm, 1<sup>mo</sup>, The mother, as being *vestita viro*, could not oblige herself for her son's aliment; and it cannot be pretended that she was *præposita huic particulari negotio*; 2<sup>do</sup>, The defender mistakes in point of law, when he argues that aliment cannot be sought *actione mandati*, because a mandate is a gratuitous office; for it is only gratuitous as to the mandatar's personal service, and not as to expenses laid out by him in executing the mandate; 3<sup>tio</sup>, As there is no place for a presumption of donation from the want of paction; so there is as little from the relation of the parties, which is but collateral; 4<sup>to</sup>, As to the ground of presumption from Bairdie's letter and ticket, the question is, If aliment was originally due, and not if *ex post facto*, it was discharged or accounted for; nor is Bairdie's long forbearing to seek payment of the aliment of any import, the delay of a debt being no discharge.

THE LORDS found James Steedman liable in an aliment for his son to John Bairdie, and remitted to the Lord Ordinary to modify the same.

*Fol. Dic. v. 2. p. 140. Forbes, p. 195.*

1715. June 23. FORRET *against* REPRESENTATIVES OF CARSTAIRS.

No 103.

A PERSON, who had arrived at the years of majority, was found liable, even without paction, for his aliment to a person who usually alimented for money.

*Fol. Dic. v. 2. p. 141. Dalrymple. Bruce.*

\* \* \* This case is No 302. p. 11098.

1734. July 30. COUNTESS OF WEMYSS *against* Her CHILDREN.

No 104.

CHILDREN who had ample alimentary provisions settled upon them by their grandfather upon the mother's side, were occasionally with him at the time of his death, and continued in family with their grandmother, his relict, for about a year thereafter, when they returned home to their father. The grandmother's executor craving this year's entertainment out of the children's funds; the presumption was founded upon by the children, That their grandmother, being in opulent circumstances, furnished the aliment out of affection, not interest.—THE LORDS found no aliment due.—See APPENDIX.

*Fol. Dic. v. 2. p. 141.*