

No. 2. 1745, Feb. 21. *BONTEIN against MILDOVAN.*

THE Lords found that by our law the *beneficium competentia* is competent to parents against their children; but as this is but a personal privilege, and not effectual against creditors, we remitted to the Ordinary to hear on the effect of that *beneficium*. *Vide Con. Harcarse D. 928.*

No. 3. 1749, Nov. 30. *HOGG against HOGG.*

WE all agreed that John Hogg had no *beneficium competentia* against Mrs Hogg his daughter-in-law, but the majority thought that he had against his grandchildren; but the difficulty was in the execution. In the houses in Edinburgh he had an infestment of annualrent for L.90 preferable to them. Only we had found them preferable, though their claim was only on a personal obligation by their father, whereon they had adjudged, in respect of his misrepresentations in the marriage-contract, but reserving his *beneficium competentia*, and therefore we thought we could sustain his infestment to that extent. But then as to the L.1000 sterling in Saughton's hands, the residue of the price of Cammo, he had no interest there, and therefore the *beneficium competentia* did not apply there. *2dly*, We thought that in modifying that *competentia*, we ought to have regard to his blind daughter, who was really secured on the L.1000 for the interest of 3000 merks during her life, and that not only during Mr Hogg's life but also during her's, because it was a duty of nature on him to provide for such a child's aliment even after his death. *3tio*, We thought that in the *beneficium competentia* we ought to consider the necessity of the parent more than the necessity of the child, whereas in a process of aliment against a child, the defender's own necessity must be first provided for; and *2dly*, That *beneficium* is competent though there were other nearer bound *jure naturæ* to aliment, as in this case John Hogg's two sons, and on the whole we modified to John Hogg for himself L.30 sterling, and for the use of his daughter L.100 Scots, and after his death the L.100 to be paid to the daughter herself; and left it to the Ordinary to hear them as to the execution. *30th* November we adhered, so as the *beneficium competentia* should not affect the widow's life-rent, though they thought it would affect the fee. I was in the Outer-House. Reversed in Parliament. 1 (27) March 1750.

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 BILL OF EXCHANGE.
 

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No. 3. 1734, Feb. 13. *NIELSON against RUSSELL.*

THE Lords found the nullity relevant, and proveable *prout de jure*. *2dly*, Sustained the reason of reduction on both acts 1621 and 1696, to the extent of L.159, the two debts in payment whereof the bill to him was indorsed. *3dly*, Repelled the reason on the said acts *quoad* the *reliquum* paid by Mr Russell by bills drawn payable to Mr Gordon.