

(Ex debito naturali.)

Lady Mary, after the death of her son, executed a will, by which she appointed Mary Sharp her sole executor and universal legatar; and to that will she subjoined these words: 'I recommend Mary Scot to her charity.'

That Mary Sharp, upon Lady Mary's death, received considerable effects by virtue of this will: That Lady Mary, while she lived, was under a natural obligation to aliment the pursuer, her only surviving child of her first marriage, who had no other means of support: That she had accordingly, while she lived, allowed her an aliment of L. 20 Sterling a-year: That Mary Sharp, as sole executor of her mother, became subject, in her place, to the same obligation; which was also strengthened by the condition annexed to the will, recommending Mary Scot to her charity.

It was *answered*, That Mary Sharp received very little benefit from her mother's succession; for that the debts due by Lady Mary had exhausted almost the whole of her effects: That, at any rate, as the defender was not bound to aliment her sister upon the footing of relation, so she was not bound to aliment her as representing their common mother; for that the obligation to aliment does not affect the disponees or legatees of a defunct: And the clause subjoined to the will was no more than a simple recommendation, which was not obligatory; and if it was, could never import an obligation to pay an yearly allowance.

It appeared by a proof, That Mary Sharp had received, in consequence of her mother's will, after all deductions, above L. 230 Sterling clear, which she had possessed since the year 1754, when Lady Mary died.

'THE LORDS found Mary Scot entitled to an aliment of L. 12 Sterling yearly, to commence from the date of the process.'

A. Nairn, Wedderburn, Johnstone, Ferguson.
Clerk, Kirkpatrick.

Alt. Duncann, J. Craigie, Lockhart.

Fol. Dic. v. 3. p. 24. Fac. Col. No. 183. p. 326.

Johnstone.

1740. July 25.

GRAHAM *against* REBECCA KAY.

AN inferior judge having decerned L. 4 Sterling of yearly aliment to be paid, by the father, to the mother of his bastard child, without limiting the endurance, a bill of suspension was, on that ground, presented; and as the question occurred upon the passing or refusing the bill, the Lords had some difficulty how to qualify the endurance; and, at last, fell upon this expedient, to refuse the bill, without prejudice to the suspender to apply again by suspension, how soon the child should arrive at the age of 14 years, and become able to aliment itself: Which implied that the aliment should continue no longer than the age of 14: And such was the opinion of the Court.

Fol. Dic. v. 3. p. 24. Kilkerran, (ALIMENT.) p. 22.

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No 73.
ment her sister-uterine, who was destitute of any fund of subsistence.

No 74.
Aliment of a bastard child due till 14 years of age.