1735.

MONCRIEFF v. MONCRIEFF.

For Appellant, *Ro. Dundas* and *W. Murray.*
For Respondents, *Dun. Forbes* and *Will. Hamilton.*

SIR THOMAS MONCRIEFF, Bart. *Appellant;*
THOMAS MONCRIEFF, Esq. *Respondent.*

21st March, 1735.

ALIMENT.—The Court of Session having modified aliment to a son, the same was restricted to the allowance which had originally been voluntarily given by the father.
Judgment for the appellant *ex parte.*

No. 33.

THE respondent having by his marriage and conduct in other respects offended his father, (the appellant,) a quarrel unhappily arose, notwithstanding which, the latter made him an allowance of 2000 merks Scots, equal to L.111, 2s. 2⅓d. sterling.

The respondent raised an action before the Court of Session for a larger aliment, on the ground that *jure naturæ,* his father was obliged to provide for him according to the extent and circumstances of his estate. The Lord Ordinary "ordained either "party to give in a condescendence of the defend- "er's estate."

Jan. 17, 1734.

A condescendence was given in by the son, and the case being reported to the Court, they "or- "dained the defender to give in a condescendence

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"betwixt and Thursday next, with certification "that, failing thereof, they will proceed upon the "condescendence given in by the son."

The defender petitioned against this interlocutor, on the ground that the sole foundation of the cause was for an aliment *ex jure naturæ*, and having voluntarily given his son 2000 merks per annum, it ought to be found that this was a sufficient aliment, and that he was not bound to expose his circumstances by giving in a condescendence of his estate. The petition was refused, and afterwards the following interlocutor was pronounced: "On report of the Lord Justice Clerk, the Lords "having considered the condescendence given in "by Mr. Moncrieff, Sir Thomas declining to make "any, modify L.200 sterling of yearly aliment, be-"ginning the petitioner's payment at Whitsunday "last, being the first term after citation for the pre-"ceding half year, and so to continue yearly there-"after, payable at two terms, Whitsunday and "Martinmas, by equal portions."

January 31.

Along with a petition against this interlocutor, the defender gave in a condescendence, stating his real estate at between L.500 and L.600 a-year, and his personal at about L.5000, whereupon the cause was remitted to the Lord Ordinary to hear parties, and upon his report the petition was refused.

February 19.

The appeal was brought from the interlocutors of the 17th, 25th, 29th, and 31st days of January last, and the 6th and 19th days of this instant February.

Entered Feb. 19, 1735.

Pleaded for the Appellant:—Without arguing

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whether or not parents are by the law of nature obliged to maintain their children after they come of age, and are able to shift for themselves, or whether the children may not forfeit their claim by disobedience,—there are, in the circumstances of this case, no grounds for the present claim, the appellant having voluntarily allowed and punctually paid to his son what was sufficient to supply him, not only with the necessaries, but (in a cheap country) with all the conveniences of life.

There is no doubt that parents are bound to maintain their children while they are unable to provide for themselves; but that a son should, beyond a necessary maintenance, be entitled to a determinate part of his father's estate, is a claim which is unprecedented in any country, and contrary both to the law of Scotland and to reason, and fraught with the worst consequences.

As it is certain that any man may disinherit his son, and deprive him of his estate after his death, it follows that during his life also, he has the same absolute power over it, and may dispose of it as he pleases. And as the father only knows what fortune he intends to give his son hereafter, he only can judge what maintenance is suitable to his condition, so that he may not be unfitted by present abundance for his future situation in life.

There is little danger of the parental power being used with too much rigour; the excess is seldom on the severe side. But if a child, whether dutiful or undutiful, may demand a certain quantity of his father's estate, the father will be deprived of all power of rewarding virtue or dis-

couraging vice in his children. He will have no control over them with regard to their education, place of abode, or course of life; and his authority may safely be slighted when the son is sure of getting whatever his father's circumstances can afford, whether he will or not.

It would invert the order of nature, and subject parents to their children, were it in the power of the latter, from caprice or undutifulness, to compel their father (as has been done in the present case,) to expose his private circumstances to the world; by which it may happen that he sustains irreparable injury.

The present action is brought upon the law of nature only, and not upon any positive statute; but nature knows no distinction between the oldest and the youngest child; they are equally entitled to the parent's care and affection. The appellant has four other children who have the same right to maintenance that the respondent has; and therefore the exorbitance of the proportion allowed by the Court of Session must be apparent, as it amounts to nearly a fourth part of his whole income.

If the present claim is well founded, it must follow that a son, living in his father's house, may complain that his father does not live so well, or keep so good a table as his fortune might afford, and therefore pray to have a maintenance suitable to his circumstances. The economy of every man's private family is left to his own direction; and in questions of this sort, the income of the father ought no otherwise to be considered than with the view of excusing him altogether from the main-

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tenance of his children, on the ground of his having no more than is absolutely necessary to support himself.

"Counsel appeared for the appellant, but none "for the respondent; and the appellant's counsel "being fully heard, the several interlocutors of the "Lords of Session complained of were read; as "likewise a petition of the appellant to the said "Lords of Session, praying, 'that the aliment al-'lowed to the respondent may be restricted to '2000 merks Scots per annum;' and due consi-"deration had of what was offered in this cause at "the bar;

Judgment.

"It is ordered and adjudged, &c. that the said "interlocutors be so far varied, as that the allow-"ance for the maintenance of the respondent be "modified to 2000 merks Scots per annum."

For Appellant, *Dun. Forbes* and *W. Murray.*