

(Ex debito naturali.)

*alleged*, The libel is noway relevant for aliment, he not being obliged by the contract for any aliment, but only for the sum, at such a time; neither is there any annualrent due for the provision till the term of payment.

Yet the LORDS found, That albeit that was no annualrent, nor provision for aliment; and that *de jure* annualrent is but due *ex pacto*, they would in this case allow an aliment far within the annualrent; because it was all that the daughters got for a very considerable estate, which was but a very small provision.

*Fol. Dic. v. 1. p. 33. Stair, v. 1. p. 152.*

No 49.  
future time,  
the heir must  
aliment her in  
the interim.

1663. January 24. CHILDREN of Netherlie *against* the HEIR.

THE children of umquhile Edgar of Netherlie, *alleging* that their father left to his heir a competent estate, and that he died before any provision or aliment appointed to them, and that the heir's tutor refused to aliment them, their mother being also dead; therefore craved an aliment to be modified, there being no compearance in the contrary.

THE LORDS found the brother, as being heir to the father, of a competent estate, liable to aliment the children, being wholly unprovided; but determined neither the time, nor the quantity, till the condition of the estate were instructed.

*Fol. Dic. v. 1. p. 32. Stair, v. 1. p. 161.*

No 50.  
The brother  
bound to ali-  
ment the  
younger child-  
ren, accord-  
ing to the  
condition and  
value of the  
estate.

1663. February 11. CATHARINE FRAZER *against* HUGH FRAZER.

THE said Catharine, only child of a second marriage, being provided to eight thousand merks of portion, at her age of 14 years, but no obligation of aliment or annualrent till then, pursues her brother, as heir to her father's estate, being of a good condition, for aliment.—He *alleges* he was obliged for none, not being parent, nor his father obliged by contract or bond for it.

THE LORDS found an aliment due, for the pursuer's mother was not alive, and able to aliment her.

*Fol. Dic. v. 1. p. 33. Stair, v. 1. p. 176.*

No 51.  
The brother  
bound to ali-  
ment the  
child of his  
father's se-  
cond mar-  
riage.

1668. January 21.

GRISSEL STUART and the LAIRD of Innes, her Husband, *against* the LAIRD of Rosyth, her Brother.

UMQUHILE Rosyth gave a bond of provision to his daughter Griffel Stuart, of 10,000 pounds, payable at her age of 17 years, with an obligation to entertain.

No 52.  
A brother  
found liable.