

ALIMENT.

415

(*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.

(Ex debito naturali.)

No 52.
in aliment to
a sister, to
whom his fa-
ther had
granted a
bond of pro-
vision.

her in the mean time, but no obligation of annualrent; she pursues her brother (as representing her father) for implement; and having lived with her uncle a part of her father's time, and *alleging* that she was hardly used by her step-mother, she craves aliment for that time of her father's lifetime, and for six or seven years since his death, or craved annualrent for her sum.—The defender *alleged* absolutor, as to the annualrents before her father's death, because she ought to have continued in her father's family; and there neither is, nor can be alleged any just cause wherefore she should have deserted the same. *2do*, Absolutor from annualrent, or entertainment since her age of 17 years; because the bond bears entertainment till that age, and no entertainment or annualrent thereafter. *3tio*, She does not, and cannot allege, that she paid out any thing for entertainment, but was entertained *gratis* by her uncle.

THE LORDS found this no ground to exclude her from aliment; and found aliment due after the term of her bond, as well as before, but not annualrent; and modified six hundred merks per annum, without allowing any thing for the year her father lived; but modified the more largely, it being unfit to dispute the necessities of her removal.

Fol. Dic. v. 1. p. 33. Stair, v. 1. p. 510.

* * * Dirleton reports the same case thus:

THE LAIRD of Rosyth having provided his daughter of the first marriage with the LAIRD of Innes, to 10,000 pounds, at her age of twenty years; and there being no obligation for annualrent:

THE LORDS, in a process at her instance for her aliment, modified 600 merks yearly. Some were of opinion that the said sum being payable at the foresaid term, the annualrent of the same should not have been modified for the time thereafter, and that she should be in no worse case than if it had been paid.

Dirleton, No 140. p. 57.

1671. November 10. HASTIE and KER his Mother, against HASTIE.

No 53.
Aliment to a
posthumous
child, unpro-
vided for, is
found due by
his brother, as
representing
his father;
but only till
he has learnt
a trade; and
on no account
after majority.

THE deceased A. Hastie, stabler in Edinburgh, having a son and a daughter when he died, disposed to them his whole means, whereof the daughter's part was but an ordinary portion, but the son's part was very considerable. After his death, his wife brought him forth a posthume son, who was destitute of all provision or aliment; whereupon his wife and that posthume pursued his son, craving that a modification might be granted for the wife's expences in child-birth, and for aliment of the posthume son since his birth, and in time coming.—The defender *alleged* absolutor from any modification for the wife's expences, because there was no ground for it in law; or for any further than her aliment