

(Ex debito naturali.)

No 48.

THE LORDS, considering that the heir was minor, and no appearance made for him, enquired into the circumstances of the estate; and modified an aliment, which they proportioned on the heir and liferentrix, as to them appeared equitable.

Act. and for the mother, *H. Home.*Alt. *Absent.**D. Falconer, v. 2. No 20. p. 23.*

** Lord Kames reportes the same case thus :

BISSET of Leffindrum died without making any settlement, leaving a son who was his heir, and seven daughters, all under age. He had a free estate of L. 2556 Scots yearly, beside an heritable debt of 4000 merks upon the estate of Errol, without leaving moveables more than sufficient to satisfy what small debts he owed. The relict liferented L. 1128 yearly. By her advice, with the consent of the curators of the heir, a process for aliment was raised in the name of the seven daughters; and the only question was, Whether the whole aliment should be laid upon the heir, or the relict bear a part? Several decisions were cited for the mother, *Gilmor, p. 56. January 1663, Stirling contra Laird of Otter**, *Stair, v. 2. p. 1. 10th November 1671, Hastie contra Hastie, No 53. infra*; *Stair, 5th July 1677, Children of Lawriston contra the Heir, No 55. infra*, burdening the heir only, and not the mother. And in support of this, it was declared for the mother, to be her fixed purpose to save what she could of her jointure for a provision to her children; and that, to load her with any part of the aliment, would have no other effect than to relieve the heir, without profiting the other children. As this matter was submitted to the Court without opposition from the heir; it was *observed*, That the heir indeed is primarily liable as representing his father; but that if his estate do not afford a sufficient aliment for himself, as well as for the other children, which was the present case, the deficiency must be made up by the mother, who is liable, *secundo loco*, to maintain her children. And accordingly L. 64 Sterling was modified in name of aliment, whereof L. 20 to be paid by the mother.

*Rem. Dec. v. 2. No 99. p. 178.*1663. *January 8.* Lady OTTER *against* Laird of OTTER.

No 49.

The heir is liable to aliment his brothers and sisters. A bond of provision being granted to a daughter, payable at a

THE unquhile Laird of Otter, by his contract of marriage, having provided his estate to his heir-male, provided 5000 merks to his eldest heir-female, when she should be capable of marriage; and an occasion offered; whereupon the said heir-female, her mother, pursues the heir-male for payment of the sum, and for payment of an aliment to the heir-female, during the time she hath been with her mother, and in time coming, till the provision be paid.—The defender

* See *Deuatio non presumitur*, in Title PRESUMPTION.

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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.