No 52.
in aliment to a sister, to whom his father had granted a bond of provision.

her in the mean time, but no obligement 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* absolvitor, 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. 2*do*, Absolvitor from annualrent, or entertainment since her age of 17 years; because the bond bears entertainment till that age, and no entertainment or annualrent thereafter. 3*tio*, 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 obligement 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, unprovided 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, disponed 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* absolvitor from any modification for the wife's expences, because there was no ground for it in law; or for any further than her aliment

No 53.

to the next term after the defunct's death, after which this posthume was born, especially seeing the defender's disposition was long before; and albeit he be unwarrantably served heir, the tutor disclaims it, and will reduce it.—It was *replied*, That beside the ordinary allowance of relicts, the extraordinary expence of the birth of a posthume, was a debt for which the father was liable, whom the defender represents as lucrative successor, by the disposition posterior to the conception of this child, *nam in beneficiis qui in utero est pro jam nato habetur*.

The Lords sustained the libel, and modified in respect of the reply and disposition.

The defender further *alleged* the libel was noways relevant, as to any aliment for the posthume; for though parents be obliged to aliment their children, yet there is neither law nor custom obliging a brother to aliment his brothers, especially where the brother doth not represent the father.—It was *answered*, The libel was not founded upon the brother's obligement, but upon the father's obligement, whom the brother represents by the foresaid disposition, which the Lords had in several cases allowed, especially in the case of the Children of Netherlie against their Brother, No 50.; and there can be no case more favourable than a posthume, whom the father did not neglect or pass by, he being gotten but shortly before his death.—The defender *answered*, That the father's obligation to aliment his children is personal, *et non transit ad heredes*; and as to the practique, that it was collusion between the heir's tutor and the bairns.

The Lords found the defender, as representing his father by the disposition of his goods, liable to aliment this posthume child during his minority, at least so long of his minority as he was without calling or means to aliment himself; but would not extend it after his majority.

Fol. Dic. v. 1. *p.* 32. *Stair, v.* 2. *p.* 1.

1676. *July* 5. Chiesly *against* Edgar of Wadderlie.

No 54.
An elder brother found obliged to pay his younger brother's prentice-fee.

Edgar of Wadderlie being charged upon an indenture betwixt him and Samuel Chiesly chirurgeon, for payment of the sum therein contained, for his brother's prentice-fee, and entertainment during his prenticeship; and having suspended the said bond, and intented a reduction thereof upon minority and lesion; the Lords found, That the second brother having no other means nor provision, his eldest brother, who was heir to his father, and had the estate, ought to entertain him, and to put him to a calling; and did not sustain the reason of lesion.*

Reporter, *Forret.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 32. *Dirleton, No* 369. *p.* 181.

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* Lord Kames is under a mistake in supposing this case is reported by Lord Newbyth; there is no such case in that MS. collection.