

1676. June 6.

RIG against RIG.

No 98.

THE LORDS found, as they had done formerly in another case, That where a person of a near relation stays for any considerable time in family with another, as, in the case in question, a brother with a sister, and both are majors, and of that age that they may agree, if it be so intended by either, that the one should be considered and have a fee and satisfaction as a servant to his sister, or that the sister should have satisfaction for the aliment and entertainment of her brother; if they make no such transaction, that neither the sister can claim aliment, nor the brother a fee, upon pretence that he did serve and did good offices to his sister; and that it ought to be thought and presumed that he did the same upon account of his relation, for his entertainment; and that she did entertain him in contemplation of the said relation, and that he was useful.

Clerk, Hay.

Fol. Dic. v. 2. p. 140. Dirleton, No 350. p. 166.

. Gosford reports this case :

IN a pursuit at the sister's instance against the brother, for alimending him when he was minor, it was *alleged*, That he had served her in her affairs during her alimending him, which was equivalent. It was *replied*, That voluntary service of a brother cannot make her debtor. THE LORDS found, That seeing she had entertained him upon agreement with the curators, and that his service was proved, and that an agent would have got as much, neither she could crave aliment, nor he fee for his service.

Gosford, MS. p. 542. No 857.

1680. June 11.

GORDON against LESLY.

No 99.

In a suit against a father for aliment of his child, at the instance of the grandfather, found that nothing was due till requisition.

JOHN LESLY having married the daughter of Walter Cochran and Janet Gordon, did, by his contract, provide the children of the marriage, and obliged himself to entertain them after his wife's death; Walter took his eldest daughter, and entertained her till his death; and his relict Janet Gordon hath entertained her to this time; and now pursues John Lesly, her father, for payment of her entertainment; who *alleged*, Absolvitor, because the entertainment, being by the father, and grandmother, it is presumed to be *animo donandi*, and could infer no obligation, unless it had been by agreement with the father, or that the father had failed to entertain his daughter. It was *answered*, That this being but a presumption, it was taken off by the pursuer's requiring the father to take home his daughter; wherein he having failed, though the grandmother

sent her not, or thrust her out of doors, yet it taketh off the presumption that her meaning was not to entertain her *gratis*. *2do*, Entertainment *ex pietate* not extended beyond father and mother, especially where the person entertained has sufficient provision, and the father is so far liberated of that burden.

No 99.

THE LORDS found the entertainment in question presumed to be made *animo donandi*, till the requisition; but from thenceforth, found the father liable.

Fol. Dic. v. 2. p. 141. Stair, v. 2. p. 770.

* * * Fountainhall reports this case :

A PURSUIT for the sum of _____ for alimending the defender's child : The LORDS found this defence relevant, That the pursuers having kept their own grandchild, the defender's daughter, in family with them, it was presumed to be *ex pietate parentali*, and so there were no expenses due for her aliment, except there had been a paction to the contrary : As also, found this reply relevant, That the pursuer required the defender to take home his daughter, and that he sought her back, and she was ready to part with her, so as to make the defender liable for her aliment since the requisition or offer, and found them probable by writ, witnesses, or oath of party, reserving the modification to themselves of the aliment.

Fountainhall, MS.

1683. *January.*

ALCORN *against* CHARTERIS.

No 100.

THE LORDS found, That a mother might crave allowance for alimending, without paction, her daughter, after pupilarity, to whom she was then debtor; because *debitor non præsumitur donare*.

Fol. Dic. v. 2. p. 141. Harcarse, (ALIMENT.) No 19. p. 5.

1701. *February 15.*

WILSON *against* ARCHIBALD.

No 101.

PETER ARCHIBALD's daughter, a young lass, having staid three years in the house of James Wilson, burghess of Edinburgh, and got her breeding and education there, he pursues her father for her aliment during that time.—*See 2d January 1700, voce PROCESS.—Alleged, imo*, She was put in the quality of a servant, and went their errands; *2do*, No aliment, because no paction; and though she was a minor, yet he might validly have pactioned for an aliment with her father; which not having done, it was to be presumed gratuitous. *Answered to the first*, She was not capable of doing any service worthy of her board and entertainment; *2do*, She was not kept as a servant, but put to schools and liberally educated: As to the *second*, Whatever may be presumed, where a