

whole estate to the defender, his apparent heir, not knowing the said Barbara his wife was with child, whereas she brought forth the said Thomas, a posthumous child, seven months after his father's decease. It was *alleged* for the defender, That a brother is not in law obliged to aliment any of his brethren or sisters, aliments being only due by parents, especially in this case, where the father did dispoise to his son, by a particular right, the lands and estate belonging to him. THE LORDS did repell the allegiance, and decerned; reserving to themselves to modify, after probation of the value of the estate; for they found, that as donations by the civil law, made by a father, are revocable *ob supervenientiam liberorum*, and that by several practiques, where bonds of provision are given to children, superseding the term of payment until they be of a certain age, that in the mean time the heirs are liable to aliment them, albeit there be no obligation in the bond; *multo magis* in this case, posthume children ought to be alimented until they be of complete age, or such time as they can be bred with some calling and profession whereby may they maintain themselves, seeing that aliment is in place of all portion they can crave, where the father, not by way of testament, but by a disposition, hath provided his apparent heir to his estate.

Fol. Dic. v. 1. p. 396. Goford, MS. No 390. p. 194.

*** See Stair's report of this case, No 53. p. 416.

1075. July 7.

WILKIE against MORRISON.

AGNES WILKIE pursues Christian Morrison for the funeral expenses of her husband, and her son, to whom Christian is heir and executor, and for the pursuer's mourning for her husband, and for the aliment of the child, who lived eight months after his father. The defender *alleged* absolvitor, as to the mourning, because the pursuer had a sufficient provision of her own; and, as to the aliment, because it was presumed to be *ex pietate materna*, because she liferented his whole means, and it could not be thought, her entertaining of an infant, was upon account to oblige him. *ado*, She, as liferentrix of his whole means, was obliged *de jure* to aliment him. The pursuer *answered*, That the child having a considerable stock of money of his own, there was no place for the presumption, neither was she obliged to dispute her intentions; for, though her intention had been not to burden her son, yet by his death, his estate falling to his father's sister, there was no ground to exeem her, neither is there any ground to oblige a liferenter of bonds and sums to aliment the heir, for the act of Parliament, appointing the aliment of heirs, is only in relation to vassals' heirs in lands, that they may be alimented out of the lands, though liferented, and so capacitated to serve their superiors.

THE LORDS sustained the process, and repelled the defences; and found, that

No 124.
presentatives,
to the ex-
pense of the
birth of a
posthumous
child.

No 125.
Found in con-
formity with
Murray a-
gainst Neil-
son, No 123.
P. 5911.

No 125. those who represented the husband, were liable for the wife's mournings, and for the aliment of the child.

Fol. Dic. v. 1. p. 396. Stair. v. 2. p. 340.

1681. February 23.

GORDON *against* INGLIS.

No 126.

A husband whose wife died within year and day of the marriage, decerned to repay the tocher without any deduction except for the expenses of her funeral.

THOMAS INGLIS being married to Agnes Gordon, and having received 800 merks of tocher, Agnes dying within year and day of the marriage without children, Janet Gordon her sister, and executor, pursues Thomas Inglis to re-
pete, and restore the tocher, who craved deduction of the expenses wared upon his wife's bridal-clothes, and her entertainment during her life, and her funeral charges. It was *answered*, That no deduction was ever allowed, or any expenses during the marriage, though this case has frequently occurred.

THE LORDS refused all expenses during the marriage, expended by the husband, but deducted the funeral expenses, as being debursed after the dissolution of the marriage, and likeways any debt of the wife's, contracted by the wife before her marriage, for marriage-clothes, and others, and paid by the husband.

Fol. Dic. v. 1. p. 396. Stair, v. 2. p. 867.

No 127.

1681. November. GEORGE HERIOT *against* HENRY BLYTH,

THE LORDS found an heir liable for the expenses of burying his predecessor's relict who had been meanly provided, and had not left wherewithal to defray the same, albeit the heir was not the defunct's son, but one of a remote degree, as a relict may be liable to the aliment of an apparent heir.

Fol. Dic. v. 1. p. 396. Harcourse, (ALIMENTS.) No 18. p. 5.

* * * P. Falconer reports the case :

IN the action of count and reckoning, pursued by Heriot heir to Lieutenant Colonel Heriot, against Dr Blyth and John Muir writer to the signet, as they, who by virtue of a commission from the Lords, had intromitted with the heritable estate, which belonged to the pursuer as heir, the LORDS sustained the funeral charges of the defunct's relict, who survived him, as an article of the defender's discharge ; and found, that the relict having no means, or estate, to defray her funeral charges, the heir of her deceased husband was liable therefor, she having died widow.

P. Falconer, No. 1. p. 1.