

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