No 72.

to be effectual againſt a man's heir, except in the caſe of a brother. Thus, although the Crown, taking by forfeiture, is *ſucceſſor titulo lucrativo* to the forfeiting perſon, yet the Crown was never found to be obliged to aliment the children of the attainted perſon; and therefore it is rather the near relation which is betwixt brothers and ſiſters, than the repreſentation of the father, that is the foundation for giving the aliment.

Replied for the defender: That by the law of nature, there lies an obligation on thoſe who are able to give charity towards the alimenting of perſons in indigent circumſtances; but by no civil ſanction is this obligation enforced, nor its extent aſcertained: And to load one perſon with the burden of the whole aliment, even of his neareſt relation, were unreaſonable, except in the caſe of parents and children.

A father is bound to aliment his children; if he refuſe, the laws of this country will compel him; and the obligation which the laws render effectual againſt the father in his lifetime, can alſo be made effectual againſt his repreſentatives: this Court, therefore, has often found, that an elder brother was bound to aliment his father's younger children; becauſe he repreſented his father *paſſive;* and the putting the judgment upon that *medium*, was in effect finding, that had he not repreſented his father, he would not have been liable in ſuch aliment. The caſe of a forfeiture is ſingular; and there the Crown is not bound to aliment the children of the attainted perſon; becauſe the forfeiture cuts off or corrupts the blood; ſo that the children can claim and enjoy nothing by or through their father.

There is no arguing from the relation betwixt parents and children, to the relation betwixt brothers and ſiſters; the relations being altogether of a different kind: And if a brother ſhould be found liable to aliment his brothers and ſiſters, by a parity of reaſoning, failing brothers, couſins would alſo be liable; for their relations differ not in kind, but in degree.

'THE LORDS found no aliment due.'

Act. *Wedderburn.* Alt. *Hew Dalrymple.*

Fol. Dic. v. 3. *p.* 24. *Fac. Col. No* 176. *p.* 263.

Bruce.

1759. *March* 8. MARY SCOT, *againſt* MARY SHARP and her HUSBAND.

No 73.
A daughter who was executrix and univerſal legatar to her mother, found liable to aliment.

MARY SCOT brought an action againſt Mary Sharp and James Lumiſden of Ranniehill, her huſband, for an aliment, founded upon the following grounds:

That ſhe was the only daughter of Lady Mary Sharp, by her firſt huſband Mr Scot of Haycheſter: That Lady Mary was again married to Sir James Sharp, by whom ſhe had a ſon, who predeceaſed her and the defender Mary Sharp: That

(*Ex debito naturali.*)

Lady Mary, after the death of her ſon, executed a will, by which ſhe appointed Mary Sharp her ſole executor and univerſal legatar; and to that will ſhe ſubjoined theſe words: 'I recommend Mary Scot to her charity.'

No 73. ment her ſiſter-uterine, who was deſtitute of any fund of ſubſiſtence.

That Mary Sharp, upon Lady Mary's death, received conſiderable effects by virtue of this will: That Lady Mary, while ſhe lived, was under a natural obligation to aliment the purſuer, her only ſurviving child of her firſt marriage, who had no other means of ſupport: That ſhe had accordingly, while ſhe lived, allowed her an aliment of L. 20 Sterling a-year: That Mary Sharp, as ſole executor of her mother, became ſubject, in her place, to the ſame obligation; which was alſo ſtrengthened by the condition annexed to the will, recommending Mary Scot to her charity.

It was *anſwered*, That Mary Sharp received very little benefit from her mother's ſucceſſion; for that the debts due by Lady Mary had exhauſted almoſt the whole of her effects: That, at any rate, as the defender was not bound to aliment her ſiſter upon the footing of relation, ſo ſhe was not bound to aliment her as repreſenting their common mother; for that the obligation to aliment does not affect the diſponees or legatees of a defunct: And the clauſe ſubjoined to the will was no more than a ſimple recommendation, which was not obligatory; and if it was, could never import an obligation to pay an yearly allowance.

It appeared by a proof, That Mary Sharp had received, in conſequence of her mother's will, after all deductions, above L. 230 Sterling clear, which ſhe had poſſeſſed ſince the year 1754, when Lady Mary died.

'THE LORDS found Mary Scot entitled to an aliment of L. 12 Sterling yearly, to commence from the date of the proceſs.'

Act. *Nairn, Wedderburn, Johnſtone, Ferguſon.* Alt. *Duncan, J. Craigie, Lockhart.* Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. *p.* 24. *Fac. Col. No* 183. *p.* 326.

Johnſtone.

1740. *July* 25. GRAHAM *againſt* REBECCA KAY.

No 74. Aliment of a baſtard child due till 14 years of age.

AN inferior judge having decerned L. 4 Sterling of yearly aliment to be paid, by the father, to the mother of his baſtard child, without limiting the endurance, a bill of ſuſpenſion was, on that ground, preſented; and as the queſtion occurred upon the paſſing or refuſing the bill, the Lords had ſome difficulty how to qualify the endurance; and, at laſt, fell upon this expedient, to refuſe the bill, without prejudice to the ſuſpender to apply again by ſuſpenſion, how ſoon the child ſhould arrive at the age of 14 years, and become able to aliment itſelf: Which implied that the aliment ſhould continue no longer than the age of 14: And ſuch was the opinion of the Court.

Fol. Dic. v. 3. *p.* 24. *Kilkerran,* (ALIMENT.) *p.* 22.