No 123. by the defunct's own son to his relict, could not oblige her, the son being the father's ordinary merchant.

THE LORDS found, that the oath before the Bailies proved not the libel, and that the accepting of the mournings did not oblige the relict, but the executors, seeing the defunct was a person of their quality, thas his relict required mourning, and therefore reduced.

Fol. Dic. v. 1. p. 396. Stair, v. 1. p. 224.

*** Newbyth reports the same case:

CORNELIUS NEILSON having given bond to Gilbert Neilson of Carrathie, his father, to satisfy what tack-duty his elder brother should be found liable to for the lands of Carrathie, upon provision that the said Cornelius should have retention in his own hands for what he should pay for his father's funerals; after his decease, the said Cornelius did send to the relict mournings for herself, her children, and other funeral furnitures, whereupon there is a pursuit intented, at his instance, against Nicolas Murray the relict, and Mr Kenneth Mackenzie her husband, for payment to him of L. 152, as the price of the furniture, before the Bailies of Edinburgh, and decreet given therefor; which being suspended upon this reason, that the decreet could not be given against the husband for constituting a debt against him, upon his wife's oath; and that the libel was not relevant whereupon the decreet proceeded, in so far as, albeit a relict had sent up to a defunct's own son for mournings, in payment whereof the defunct's executors are only liable, seeing a naked sending could not in law oblige her, except she had obliged herself to repay the same, neither could she be obliged *ex in rem verso*, seeing that furniture, being payable by the executors *ex sua natura*, it was only *in rem versum* to them, and not to the relict; and 3*tio*, That it was not proved by the relict's oath, that she had sent for the furnishing, but that it was sent to her upon the executor's account, and upon the account of the former bond. THE LORDS found all and every one of the reasons relevant for suspending the letters; and found the decreet before the Bailies intrinsically null, notwithstanding it was alleged they were all competent and omitted, which the LOSDS found could not be respected *in hoc casu*, the reasons being all *in jure*.

Newbyth, MS. p. 1.

1671. *November* 10.

BARBARA KERR and THOMAS HASTIE Her Son *against* WILLIAM HASTIE.

No 124. A relict is entitled, against her husband's re-

IN an action for aliment pursued at the instance of the said Thomas, against William Hastie his elder brother, as heir to his father, at least successor *titulo lucrativo*, upon this ground, That the father having made a disposition of his

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 dispone to his son, by a particular right, the lands and estate belonging to him. THE LORDS did repell the allegeance, 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 obligement 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. Gosford, MS. No 390. p. 194.

No 124. presentatives, to the expense of the birth of a posthumous child.

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

1675. *July* 7. WILKIE *against* MORRISON.

No 125. Found in conformity with Murray against Neilson, No 123. p. 5921.

AGNES WILKIE pursues Christian Morison for the funeral expenses of her husband, and her son, to whom Christian is heir and executor, and for the pursuer's mournings for her husband, and for the aliment of the child, who lived eight months after his father. The defender *alleged* absolvitor, as to the mournings, 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. 2*do*, 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