(OF THE ACT 1491.)

No 10.

ed to her by the purſuer's father, by her contract of marriage; which the ſaid purſuer's father is obliged to warrant to her; and the purſuer being bred up with a writer, and now a man of perfect age, he ought to do for himſelf; at the leaſt he ought to ſeek his father, who, in nature, is bound for aliment to his ſon.—THE LORDS, in reſpect of the allegeance, aſſoilzied the relict, and found no modification ought to be granted, of her part of the lands liferented by her; for which they found, That the acts of Parliament, which were the grounds of this purſuit, could be no warrant to ſuſtain this action againſt her: And as to the father, albeit the father, by the law of nature, is obliged to nouriſh his ſon *quoad alimentum;* yet they found, That this act of Parliament could not be any ground to maintain this action againſt the father, to compel him to pay any thing out of that part of his liferent lands, for his ſon's entertainment, except that he might ſhew ſome other reaſon to induce it, as that the father had kythed ſome unnatural and inhuman dealing to the ſon, and had refuſed him his ordinary maintenance.

Act. ——— Alt. *Murray*

*Fol. Dic v.* 1. *p.* 29. *Durie, p.* 819.

*** Spottiſwood reports the ſame caſe thus:

MR GEORGE HERIOT, as heir to his brother Walter Heriot, fiar of Ramorney, purſued his father, Walter Heriot of Ramorney, and Jean Law, his brother's relict, liferenters of the whole lands, to which he was to ſucceed, for a modification whereupon to live.——THE LORDS would not ſuſtain the ſummons againſt his brother's relict, becauſe his father, who was liferenter of the one half, was alive, who was bound, by the law of nature, to entertain him, and not his ſiſter-in-law, who had her liferent of the other half for an onerous cauſe, in recompence of her debt.—As for the father, the purſuer inſiſted not much againſt him.

*Spottiſwood* (HEIRS), *p.* 145.

1669. *January* 27. STIRLING *againſt* HERIOT.

No 11.
Aliment not due by the relict liferenting, the whole eſtate being inconſiderable, and the heir major, and in buſineſs.

—— STIRLING, ſon to Commiſſary Stirling, purſues for a modification of an aliment, out of the liferent of Helen Heriot, his father's wife, as having the liferent of the whole eſtate.

THE LORDS ſuſtained not the aliment, in reſpect the defender's liferent was very mean, and the purſuer was major, and kept a brewery; and ſhe kept one of his children; and that he was not *frugi aut bonæ famæ.*

*Fol. Dic. v.* 1. *p.* 29. *Stair, v.* 1. *p.* 595.

(OF THE ACT 1491.)

*** Gosford states the same case thus:

No 11.

JAMES STIRLING pursuing Helen Heriot, his mother-in-law, for an aliment upon that ground, that by her liferent and infeftments, granted to creditors, the whole rent of his father's estate was exhausted.—It was *alleged* for the defender, That her liferent was only four chalders of victual, and 100 and odd pounds Scots; which was no more than a competent aliment to herself; as likewise that the pursuer was now thirty years of age, and had entertained himself as a soldier, or by brewery; and had left to him, by his uncle, the sum of L. 8000 Scots.—THE LORDS found the allegeance so qualified, relevant to elide the pursuit; notwithstanding it was answered, that the said sum left by his uncle, was due by his father, to whom, he being heir, all other creditors were preferred, whereby the whole estate was exhausted.

*Gosford, MS. No 97. p. 35.*

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No 12.
An aliment modified to an heir out of his step-mother's jointure, although he was major, and an advocate, but did not earn a subsistence by his profession.

1705. *July* 25. AITON *against* COLVIL.

MR WILLIAM AITON, of that Ilk, pursues Dame Margaret Colvil, his mother-in-law, for an aliment, in respect his father's estate, being 47 chalders of victual, is overburdened with her liferent of 24 chalders, and 40,000 merks of provision to her children, and other 40,000 merks of extraneous debts; so there was no sufficient estate left to sustain the heir.—*Alleged*, This process is either founded on the statute of James V. for superiors alimenting their ward-vassals, or *super jure naturæ*, where one pursues his own mother; none of which holds here, she being a stranger to him, and secured in a jointure by her contract of marriage, which cannot be diminished *contra fidem tabularum nuptialium*.—*Answered*, Much of our law is introduced by custom, time out of mind; and this of alimenting heirs is one of them; and much stronger than our positive statutes, and has been ever sustained against step-mothers having exorbitant liferents.——THE LORDS repelled the defence, in respect of the answer.—*2do*, *Alleged*, These aliments were only given in favour of minors, who had no other way of sustenance; but where they were come to age, and had a calling, they were never granted; for that were to encourage idleness; but so it is, the pursuer here is both major and an advocate. And Durie, in two several decisions, 11th February 1636, Sibbald, No 9. *supra*; and 21st July 1636, L. Ramornay, No 10. *supra*—tells, that the Lords refused aliments to such as had callings.—*Answered*, The name of an employment will not afford a man bread; neither is the race always to the swift, nor the battle to the strong; *et officium nemini debet esse damnosum*: And we have known many advocates who have risen to a great eminency and practice, who, at the beginning, have had little or no employment. And the cases cited do not meet; for, in the first, the grandfather was alive, who had a liferent reserved; and it was thought as reasonable he should bear the aliment as the mother. And