No 19. tion, ſave an annuity of 1000 merks provided to his daughter-in-law, the purſuer's mother.

Fol. Dic. v. 1. *p.* 30.

1675. *February* 26. SIR J. WHITEFORD *against* the LAIRD of Lamington.

No 20.
The mother only liable, not the grand-father, whether the mother liferented the reſidue of the eſtate, not enjoyed by the grand-father by reſervation.

SIR JOHN WHITEFORD having married the Lady Lamington, purſues the Laird of Lamington, her ſon, for ſeveral particulars, whereof one was for his aliment from his birth till he was 14 years of age.—The defender *alleged* abſolvitor, becauſe the Lady Lamington liferented all the eſtate in which his father died, in fee, and ſo ſhe was obliged to aliment him.—It was *anſwered*, That his grand-father being alive, and having a plentiful eſtate, and having only provided three or four thouſand merks a-year to his ſon and his wife, his grand-father was obliged to aliment him; and if he himſelf had purſued his grand-father for aliment, or his mother, who was at the expences of the ſame, Lamington would have been liable; and ſo this Lamington, as being his heir, muſt now be liable for the whole, or at leaſt for a proportionable part, effeirand to his eſtate and her eſtate; and the Lords in many caſes had found not only the lady liferenter, but the grand-father liable.—The defender *replied*, That a grand-father was never found liable for any part of the apparent heir's aliment, unleſs the grand-father had liferented an eſtate, whereof the grand-child was fiar; for liferenters are only liable by the act of Parliament to aliment the fiar, whoſe whole fee is liferented; ſo that the Lady having liferented all, whereof this Lamington is fiar, ſhe is ſolely liable for his aliment, and not his grand-father, who provided a conſiderable part of his eſtate to his ſon and his heirs.

THE LORDS found the Lady liferenter only liable for her ſon's aliment, and therefore aſſoilzied the ſon from any modification upon the account of any entertainment given by her or her ſecond huſband.

Fol. Dic. v. 1. *p.* 30. *Stair, v.* 2. *p.* 328.

1677. *December* 12.
PRESTON of Airdrie *against* the LIFERENTERS of Airdrie.

No 21.
The act 1491, comprehends conjunct-fiars and liferenters, as well as donatars of ward.

PRESTON of Airdrie being heir apparent of the eſtate of Airdrie, purſues his mother and his grand-father's ſecond wife, as liferenters of the whole eſtate, for modification of an aliment to him as apparent heir, conform to the act of Parliament 1491, cap. 25.—It was *alleged* for the defenders, That the aliments of heirs was only by cuſtom, and could not take place where the liferenters, who were moſt favourable creditors, had but a juſt compenſation for what they brought in.

(OF THE ACT 1491.)

——THE LORDS repelled this defence; and found, by the ſaid act of Parliament, that donatars of ward, and all conjunct fiars and liferenters, ſhould uphold the lands liferented, and aliment the heir.—It was *alleged* for the old Lady, That the purſuer's father having burdened his eſtate ſo, that nothing was free above the liferents, his heir could not return to burden her liferent, albeit he might burden his mother's liferent, who ran the hazard of her huſband's fortune, and had ſo near a relation in blood to her ſon, but the grand-mother was a ſtranger; and if the grand-father had diſponed his eſtate to his ſon, and reſerved his liferent of a part, if the ſon had dilapidate the fee, the grand-father would not be liable to an aliment; ſo neither ought the grand-mother; much leſs the grand-father's ſecond wife. And as to the caſe of the grand-father, it was ſo decided in the caſe of the Laird of Silvertounhill obſerved by Durie; and in the caſe of the Laird of Lamington againſt his Grand-father, decided in the proceſs at the inſtance of Sir John Whitford againſt Lamington, February 26th 1675, No 20. *ſupra*. No 21.

THE LORDS found both the liferenters liable, *pro rata*, according to their liferent; there being nothing here of the caſe of the grand-father's diſponing the eſtate, with reſervation of his own liferent.

Fol. Dic. v. 1. *p.* 29. 30. *Stair*, 2. *p.* 576.

1709. *February* 15. BONAR *againſt* BONAR.

No 22.
An idiot is not to be conſidered as a liferenter, ſo as to be liable in aliment to the next heir.

MR JOHN BONAR of Greigſton having been declared fatuous, and an idiot, by the Lords, about ſix or ſeven years ago, and ſo found by an inqueſt; and Maxwell of Lekiebank being named by the Exchequer, his tutor-dative, for adminiſtrating his eſtate, extending to twelve or thirteen hundred merks per annum, Margaret Bonar, his brother's daughter and apparent heir of line, purſues her uncle and his tutor for an aliment, having no other way to ſubſiſt *aliunde*; and ſeeing his eſtate is ſufficient to aliment them both, it is but reaſonable the Lords modify the ſame to her, being as yet an infant. *Alleged*, 1*mo*, *Non conſtat*, ſhe is either preſumptive or apparent heir, ſeeing the lands may be tailzied to heirs-male. 2*do*, *Esto* they were not; there is neither law nor practice for aliment in this caſe; for our acts of Parliament have ſuſtained ſuch proceſſes at the inſtance of fiars, againſt liferenters poſſeſſing the greateſt part of their eſtates; but it was never pretended that a fiar, having the abſolute diſpoſal of his own eſtate, can be burdened with an aliment to his apparent heir, on the pretence of a remote view of ſucceſſion.—*Anſwered*, The ſpecialty here, giving riſe to an aliment, is his fatuity, by which he is ſo bound up, that he can neither diſpone nor alienate, and ſo is upon the matter a naked liferenter, in which caſe the adverſe party yields an aliment may be craved; and ſo it is but an eaſy extenſion of the law, *a paritate rationis*, to a caſe equally favourable; and the Lords have found an elder