

(OF THE ACT 1491.)

though the said pursuer had nothing whereupon to live, being a young man either major, or near majority, but he might pursue his mother as he pleased.

Clerk, *Hay*.

Fol. Dic. v. 1. p. 29. Durie, p. 457.

No 16.

1631. *February 22.* FINNIE *against* OLIPHANT.

A TUTOR, by the law and practice of the realm, will get the mother compelled to deliver the pupil to him; as also will get a modification from her of reasonable maintenance to the heir, in case the mother be infest in liferent of all his heritage, albeit he have no ward-lands but burgage. (*See TUTOR and PUPIL.*)

Fol. Dic. v. 1. p. 30. Auchinleck, MS. (TUTOR.) p. 204.

No 17.
The mother liferenting the whole heritage, liable to aliment the heir, but not entitled to the custody of him while a pupil.

1662. *June 27.* RUTHVEN *against* LAIRD of Gairn.

THE Laird of Gairn having infest his son in his estate, reserving his own liferent; after his son's death, his oye pursues him for an aliment out of the estate, conform to the act of Parliament, appointing the heir to be entertained by the donatars to the ward, conjunct-fiars, or liferenters thereof.—The defender *alleged* absolvitor, because the act of Parliament cannot be extended to his case, who voluntarily infest his son in his estate, with the burden of his liferent. *2do*, If any aliment were due, the mother, who is liferenter, must bear her part. *3tio*, Aliment is only due where the heir hath no other means; but here the heir hath a stock of money, which, though liferented by his mother, yet he may entertain himself out of the stock.—The pursuer *answered, 1mo*, That the act of Parliament anent alimentering of heirs, is generally against liferenters without exception. *2do*, The disposition by the defender to the son, was for a tocher worth all the estate he then had; wherefore no part was liferented by the son, or his wife, the pursuer's mother, but only a sum of money which came by herself; and there is no reason that the stock thereof should be exhausted for the pursuer's aliment, the defender having now succeeded to a plentiful estate.

THE LORDS repelled the defence, in respect of the replies.

Fol. Dic. v. 1. p. 30. Stair, v. 1. p. 115.

No 18.
The grand-father, who had a liferent by reservation, was found liable to aliment the apparent heir, the mother having no liferent, but of a sum which came from herself.

1729. *January.*

HAY, Younger of Park, *against* his GRAND-FATHER and MOTHER.

THE heir's aliment was found to be a burden upon the mother, and not upon the grand-father, though he enjoyed the liferent of the whole estate by reserva-

No 19.
The mother liable before the grand-father.

(OF THE ACT 1491.)

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

Fol. Dic. v. 1. 1. 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 life-rented the residue of the estate, not enjoyed by the grand-father by reversion.

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* absolutor, because the Lady Lamington life-rented 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 life-renter, 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 life-rented an estate, whereof the grand-child was fiar; for life-renters are only liable by the act of Parliament to aliment the fiar, whose whole fee is life-rented; so that the Lady having life-rented 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 life-renter only liable for her son's aliment, and therefore *affoizied* 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 LIFE-RENTERS of Airdrie.

No 21.

The act 1491, comprehends conjunct-heirs and life-renters, 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 life-renters 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 life-renters, who were most favourable creditors, had but a just compensation for what they brought in.