

(OF THE ACT 1491.)

No 8.

heir to want. And as the superior is liable by that act of Parliament, to entertain the apparent heir of the vassal, whether the lands fall in waird, by decease of the apparent heir's father, or any other of his predecessors; so likewise by whose deeds forever the rents of the estate are exhausted, the liferenters are always liable to the heir for an aliment.—THE LORDS found the liferentrix only liable for the modification of an aliment, if there was not an estate free for the maintenance of the apparent heir, after deduction of liferents and annualrents, the time of her husband's decease: And that there being a sufficient estate then free, the condition of the estate, the time of the apparent heir's father's decease, cannot be respected to make the former liferentrix liable to the apparent heir in an aliment.

*Sir P. Home, MS. v I. No 140.*

1636. February 11.

SIBBALD against WALLACE.

No 9.

Aliment was refused to an apparent heir, because the sums liferented by the relict of his brother were small, and not exceeding the interest of her tocher; and because he was 40 years old, and ought to have a trade.

ONE Mr William Sibbald pursuing the relict of Mr Alexander Sibbald, who was his brother, to hear a reasonable modification decerned to be given to him, as heir to his deceased brother for his aliment, out of 400 merks yearly, whereof she was liferenter and conjunct-fiar with her husband; from the which pursuit the LORDS assolizied the defender, because it was neither founded upon law, equity, nor practice; seeing the relict had only investment of 400 merks of annualrent yearly, whereof 200 for the annualrent of 2000 merks given with her in tocher to her husband; and the other 200 merks was for the like sum, which her husband, by her contract of marriage, was obliged to furnish, effeirand to her tocher received by him; no part whereof the LORDS found could be allotted to the pursuer, for his aliment, he being a person major, past the age of 40 years at least; and who either ought to have taken him to a calling, whereby to have lived, or else having an actual calling whereby he might live; and the act of Parliament, which is the ground of the like pursuits, is introduced in favours of persons being minors: Likeas this pursuer designed himself, in this summons, to be a preacher of the word of God; and therefore absolvitor was given.

*Fol. Dic. v. I. p. 29. Durie, p. 794.*

1636. July 21.

L. RAMORNAY against LAW.

No 10.

Aliment refused to an heir of perfect age, and bred a writer; the whole rents being liferented.

THE young Laird of Ramornay being married upon the Bishop of Glasgow's daughter, and he dying without bairns, his brother succeeding to his fee, pursues his father, and the brother's relict, who had all the liferent of the whole lands, for a modification. And the relict *alleging*, That no part could come off her, for modification; because she having paid a competent tocher of 8000 merks, for her liferent of ten chalders victual, granted to her in conjunct-fee, and contract-

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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 allegiance, affoizied 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.

No 10.

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.

— 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.*

No 11.

Aliment not due by the relict liferenting, the whole estate being inconsiderable, and the heir major, and in business.