

as come in place of Pitsligo, to communicate to them the right which Pitsligo had to the teinds, by the Act 1690, as that was no new right given to the patron, but a continuation of the former right which his predecessor had at the time when he entered into the foresaid agreement, though in a different form. And so this matter has been constantly understood, that such obligation granted before the Act 1690 bound the patron, having right by that act, to grant an heritable right to the heritor of his own teinds. So it was adjudged *December 3, 1698, Laird of Allardice v. Viscount of Arbuthnot*, and so it has been held ever since."

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1754. *January 25.* MARGARET ANDERSON, Relict of JAMES GIBSON, and RACHAEL GIBSON, her Daughter, *against* JAMES GIBSON and CURATORS.

"THIS was a process of aliment against James Gibson, grand-child to the eldest sister of Bailie Jack, and as such, heir portioner with the bailie's youngest sister in his heritable estate, at the instance of Gibson's mother and sister, which came in by course of the summer roll; whereon you found no aliment due to the sister, as the defender had not succeeded to the estate as heir to his father, but to his grand-uncle; but on that consideration gave the larger aliment to the mother. You gave her L.50 by way of locality, but with this quality that she was to be relieved of repairs.

"The defender reclaimed, and on calling the cause you restricted it to 600 merks, she to be liable for wastes and repairs, with liberty to the defender, in case the circumstances of his mother should alter, to apply for restricting or discharging the aliment.

"Mother and daughter now both reclaim; the daughter but faintly; but for the mother, she complains, *1st*, Of the quantum, and next of its being a locality.

"As to the quantum, she represents the estate as clear L.200, which will bear L.50 of aliment; and as to the locality, observes that the whole subject is possessed by the heirs-portioners, *pro indiviso*. A locality must subject the mother to a proportional part of the expense of management of the whole, and withall is a thing uncertain and precarious.

"ANSWERED,—*1st*, That the petition is not within the days, which, as to the sister may be true; but as to the mother, is not, if I count right. *2dly*, As to the daughter, there is no foundation in law for her claim; and as to the mother, the claim is admitted to be founded; but as to the *quantum*, L.50 would be exorbitant, as the estate consists in houses, which is not like land-rent. And, *3dly*, Whatever it be she gets, a locality is the equal thing, as either party should bear the expense on their several interests."

*N.B.* This case is reported in *Fac. Coll. (Mor. 427)*, as to the claim of the daughter for aliment.