

(OF THE ACT 1491.)

1762. *March 1.*HELEN ADAM *against* Sir ANDREW LAUDER of Fountainhall.

No 26.

The proprietor of an entailed estate, found obliged to aliment his son's wife.

SIR ANDREW LAUDER's eldest son, a lad of twenty, living *in familia* with his father, made a runaway marriage with Helen Adam, a servant maid of the house; and immediately after quitted her, and went off to the East Indies, where he settled.

Helen Adam brought an action of aliment against Sir Andrew, his father, possessed of an entailed estate of L. 250 clear rent.

*Objected* by Sir Andrew, *Imo*, He has but a small estate, and eleven younger children, without one penny to give them, except what he can gather by his annual savings, seeing his estate is entailed. In such a situation, the law could not mean to subject the father to the aliment of his eldest son's wife.

*2do*, At any rate, the son is primarily liable, the father only *subsidiarie*; but the pursuer, as yet, has not brought any action of aliment against her husband.

THE LORDS found the defender liable to aliment.

A.G. *Jo. Dalrymple.*Alt. *R. Bruce.**Fol. Dic. v. 3. p. 22. Fac. Cal. No 86. p. 190.**M. Laurin.*1780. *June 24.*GEORGE STEWART *against* MRS CHARLOTTE CAMPBELL.

No 27.

Aliment not exigible by an heir of entail, from an annuitant on the estate.

JAMES STEWART of Stewarthall, executed an entail of his estate, with the usual clauses, and likewise under this condition; 'That the heirs of entail should be obliged to apply L. 100 yearly of the rents towards the extinction of the debts with which the estate was affected.'

He afterwards married Mrs Charlotte Campbell; and, in virtue of a power reserved in the entail, he settled on her a jointure of L. 130 *per annum*.

George Stewart, though a very distant relation, succeeded as first heir of entail; when he found the situation of the estate such, that, after payment of the jointure, the rents of the lands, which amounted to L. 246, fell considerably short of the other annual burdens. He had no separate funds; nor did he practise any calling to earn his subsistence; for, though he had been bred a sailor, and was still a young man, he had withdrawn himself from that way of life.

He therefore claimed an aliment from the widow, as liferentrix of so large a part of the produce of the estate; and having raised an action on that ground, it was

*Pleaded* for the defender: The defender is, by her marriage-contract, an onerous creditor on the estate, and is not bound to aliment the pursuer, her debtor.