

(OF THE ACT 1491.)

1662. *February 13.* ANTONIA BIRNIE *against* LIFERENTERS of Roffie.

## No 14.

The heir pursuing his mother, a liferenter, for aliment, must show that appraisings, which exhaust the residue of the estate, were led before the defunct's decease.

ANTONIA BIRNIE, as heir apparent, and having right to the fee of the estate of Roffie and Fordel, pursues her mother and grand-father; liferenters thereof, for a modification of aliment. The grand-father made no opposition.—It was *alleged* for the mother, That the whole inheritage was not liferented.—The pursuer *answered*, That what was not liferented, was affected with appraisings for the defunct's debts, led after his death.—The defender *answered, non relevat*, unless the appraisings had been before the defunct's death; but being against the apparent heir herself, she ought to sell land, and pay the debt, and live upon the remainder. The pursuer offered her to prove the appraisings and debts equivalent to the value of all the lands not liferented.

Which the LORDS found relevant.

*Stair, v. 1. p. 99.*

1667. *December 18.* ROBERT DOBY *against* the LADY of Stonyhill.

## No 15.

The Lords declined to decide, on a demand for aliment by an heir, against his mother, where the debts which exhausted the residue of the estate were personal, and no infestment thereon,

THE Lady Stonyhill being provided in liferent, to an annualrent of 2800 merks, her son pursues her for an aliment; both upon the act of Parliament, in respect that the defunct's debt was equivalent to all the rest of the estate, beside her liferent, and also *super jure naturæ*, as being obliged to aliment her son, he having no means, and she having a plentiful provision.

THE LORDS, in consideration of the newness of the case, and that the debts that might exhaust the estate, were most part personal, and no infestment thereon, before or after the defunct's death, recommended to one of their number to endeavour to agree the parties.

*Stair, v. 1. p. 498.*

1629. *July 7.* HAMILTON Younger of Blair *against* his GRAND-FATHER.

## No 16.

A grand-father, liferenter by reservation, was found not obliged to aliment his grand-son.

THE oye pursuing the goodfir and his mother for his intertainment, by some modification out of the living which was possessed by them: it was found, That the goodfir having before given to the pursuer's father, his own son, a great part of the living, and reserving but a portion to himself to live upon; a part of which living so demitted by the goodfir, being yet possessed by the son's wife, the pursuer's mother, albeit the son had sold or wadset the rest thereof, and thereby had left but a small part behind him un-annailzied; yet that the goodfir was not holden by law, to give any further part to the pursuer for his entertainment, al-

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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 alimenting 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.