

(OF THE ACT 1491.)

No 1. self as apparent heir to the defunct; and if she pleased also, she might charge him to enter heir, and if he refused, then she had reason to dispute, why she might be freed of this modification, or make other advantage thereby.

A.G. *Nairn.*

Alt. —.

Clerk, *Hay.**Fol. Dic. v. 1. p. 28. Durie, p. 755.*

No 2.

In a pursuit against an heir renouncing, at the instance of a liferenter, for aliment furnished, the heir assailed; because the liferenter was bound to aliment the fiar. The aliment was bestowed before the renunciation.

1667. July 16.

HAMILTON against SYMINGTON.

DAVID HAMILTON, as assignee of Robert Steel, to a bond granted by Andrew Symington, pursues Griffel Symington as representing him, for payment; who *alleged* absolvitor, because the alleged bond is manifestly null, in so far as on that side where the subscriptions are, there is only the clause of registration, and all the rest is filled on the other side with another hand, and there is not one word on the subscribed side of the matter of the bond, that might have connection with the back-side, which is un-subscribed; so that this has been the last sheet of a writ taken off, and filled upon the back, upon which any thing might have been filled up that the pursuer pleased.—The pursuer *answered*, That he opposed his bond subscribed by witnesses, which he abides by as a true deed, and is valid unless it were improven.

THE LORDS found this writ null; and yet declared, That if the pursuer could adduce writs or adminicles to astruct the same, they would examine the same *ex officio*; as the writer and witnesses, if they were alive.

The said pursuer did also *insist* against the defender for her own aliment, as having right thereto from his own son, who had married her mother.—It was *alleged* for the defender, That her mother liferented her whole estate; and so by act of Parliament was obliged to aliment the apparent heir.—It was *answered*, The defender had renounced to be heir to the same pursuer, and so could not crave that benefit.—It was *answered*, That as apparent heir, she had right to the aliment; and her offering to renounce, was but to save her from personal execution; and it could not prejudice her of her aliment, which she had received before she renounced.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 28. Stair, v. 1. p. 474.

* * * The same case is thus mentioned by Dirleton:

It was found, That the mother, being liferenter of all that could belong to the daughter as fiar and heir to her father, was obliged to entertain her; and *de facto* having entertained her, could crave nothing for her aliment, though the time she was entertained, she was only apparent heir, and thereafter was about to renounce to be heir.

Clerk, *Hamilton.**Dirleton, No 95. p. 38.*