

(OF THE ACT 1491.)

No 34.

in all modifications of aliment, the Lords do always consider the quantity of the liferent, the quality and circumstances of the liferentrix, &c.

Answered for the pursuer, That whatever tocher or provision she brought, makes no difference here; because, still the heir, at least under pupilarity, must be alimented, which is *provisio legis*, and by no paction can be evacuated: And as the law did openly intimate to her this act, as a burden which she was in hazard to undergo, she ought to have provided for his liferent suitably; for the rule is, that whatever portion of burden each liferenter have from the fiar's estate, and whatever the portions were that they brought, yet that since he finds them liferenters, they must contribute to his maintenance.

THE LORDS found the defence not relevant to affoilzie the step-grand-mother from contributing a proportion of the pursuer's aliment.

Act. Boswell.

Alt. Sir Thomas Wallace.

Clerk, Robertson.

Fol. Dic. v. 1. p. 31. Bruce, No 115. p. 143.

1729. July 12.

Lady ANN ALLARDICE, against MARY MILL, Relict of James Allardice of that ilk.

No 35.
Contrary to
No 32.

IN a pursuit, at the instance of an apparent heir for aliment, against his mother and grand-mother, liferentrixes upon his estate, the grand-mother was affoilzied, because she had formerly given down to her son, the pursuer's father, more of her liferent provision, than the Lords would have decerned to this pursuer, had her provision remained with her entire.

Fol. Dic. v. 1. p. 35.

An offer to 2-
alimnt in fa-
mily not re-
levant.

By the case, the Heir of Kirkland against his Grand-mother, No 32. *supra*, an offer to aliment in family was found not relevant to elide the claim.

The same law was recognized in the case, Finnie against Oliphant, from Auchinleck, No 17. *supra*. That case is reported likewise by Durie; referred to be placed here to illustrate this principle, as follows:

1631. February 22.

FINNIE against OLIPHANT.

No 35.
A mother li-
able in ali-
ment, and,
having mar-
ried a second
husband, not
permitted
the custody of
the minor.

A FACTOR for a tutor-dative, pursuing the mother for a modification, to be given yearly to the minor, for his entertainment; wherein the LORDS found, That albeit the defender bruiked no ward-lands of the minor, and that the minor had no ward-lands; yet, seeing she was liferentrix of all the minor's means, viz. Houses, and annualrents of money, that a modification ought to be taken there-