

(OF THE ACT 1491.)

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 alimentering 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.