

(OF THE ACT 1491.)

No 12.

in the second, *non constat*; but he was an actual placed minister, and so had a sure fund to live upon; and the mother had but an aliment herself; and it was thought hard to burden one aliment with another.—THE LORDS also repelled this defence.—Then 3<sup>to</sup>, *alleged*, That the lady was, by her contract of marriage, burdened with alimenting her own children till they were seven years old; and so cannot be farther burdened with the heir.—*Answered*, The children had an adventitious estate *aliunde* whereon they might be alimented.—THE LORDS repelled this also.—4<sup>to</sup>, *Alleged*, He was served heir *cum beneficio inventarii*, and behoved to add this to the inventory, which would accrue and appertain to his father's creditors; and so he could have no benefit thereby: Likeas, there was no real diligence on the estate, by adjudications or infeftments, to debar him from possessing; and so he could claim no aliment; as was found, 13<sup>th</sup> February 1662, Antonia Birnie *contra* the Liferenters of Rossie, No 14. *infra*; and 18<sup>th</sup> December 1667, Doby *contra* the Lady Stonyhill, No 15. *infra*; where personal debts exhausting an estate, were not thought sufficient to found an aliment.—*Answered*, Aliments were neither arrestable nor affectable by creditors; and so are not to be added to the inventory; and the law made no difference whether he was served or not: And 5<sup>tho</sup>, at the time of the father's death, there were no real diligences, but the debts merely personal; yet how soon are they made real, by charging him to enter heir, and adjudging?—THE LORDS also repelled this; and then proceeded to the modification of the aliment; and finding the lady had 24 chalders of victual, they fixed on the fourth part of it. But the debate arose, whether to give him six chalders of victual, or 600 merks of money? Some were for a locality out of her jointure lands; but that not being judged legal, they fixed on the money, and decerned her in the same; the first half year's payment beginning at Martinmas next. And seeing he was quarrelling her liferent in a reduction, as exorbitant; and so it was contended he could not do both; the LORDS thought they might modify in the mean time; for if he prevailed in his reduction, then this aliment would cease.

*Fol. Dic. v. 1. p. 29. Fount. v. 2. p. 287.*

1687. June 4.

SIMEON RAMSAY *against* RIGG.

SIMEON RAMSAY pursues his mother for an aliment out of her jointure, because he was a minor, (though the President said it imported not whether he was major or minor, if he could not live *aliunde*, and was not bred, by his parents, to a trade which could make him subsist) and she liferented all, and was married again. *Alleged*, He was bound apprentice to a skipper, and was 18 years of age, and had run away, and she had only 600 merks by year.—THE LORDS modified to him L. 100 Scots yearly.

*Fol. Dic. v. 1. p. 29. Fount. v. 1. p. 454.*

No 13.

A mother decerned to aliment her son 18 years old, and an apprentice.