

(OF THE ACT 1491.)

No 38.
red. An offer
by him to ali-
ment the heir
in his own
house, not
relevant.
An assignee
to a gift of
ward liable.

tainment of a person who can contract, infers no obligation, but is a mere donation without paction. *2do*, The defender is but assignee to a gift taken by the Lyon, and can only be liable for the time since his assignation. *3tio*, He cannot be liable, unless it had been alleged, he had intromitted with the minor's rents. *4to*, He offered to the pursuer to take him home to his own house and aliment him.

THE LORDS found the defender liable in a modification, suitable to the estate and quality of the heir; and found the heir not obliged to go to his family, as in the case of heirs or pupils; and found him liable, since the time of his assignation, whether he intromitted or not, unless he instruct how he was excluded from intromission legally; but found him not liable for bygones, since he was freely alimented by another.

Fol. Dic. v. 1. p. 31. Stair, v. 2. p. 696.

1699. July 14.

OGILVIE against GORDON.

No 39.
Onerous assignee to the liferent, cannot be affected by the heir's claim of aliment.

OGILVIE of Linksfield pursues Jean Gordon, his mother, as liferentrix of his lands for an aliment.—*Alleged*, All she now possesses is not L. 200 Scots, which is not a competency for herself, and can allow no defalcation to her son.—*Answered*, The liferent she entered into was much larger; and if she, by mismanagement, or contracting of debts, has diminished the legal fund out of which his aliment is due, *sibi imputet*; and it must be considered, not as it now stands, but as her husband transmitted it to her, and she ought not to lucrate by her own fact or fault.—THE LORDS considered these aliments were founded not only *super jure naturæ*, but on the 14th act of Parliament 1535, and act 25th 1491, anent superiors of ward lands, their alimenting their vassals; which is a real burden, and follows all singular successors; but it is not so clear *quoad* other liferenters, who are indeed named in the preamble, but not in the subsumption or statutory part of the act; and whatever might be said against liferenters, who, by voluntary or gratuitous deeds, have diminished their liferents; yet, where they are divested by creditors adjudgers, for onerous causes, the aliment can never be real to affect the liferent they possess, either by paction or legal diligence, providing there be neither fraud nor collusion in the case.—THE LORDS found her creditors, nor singular successors for onerous causes, no way liable nor affectable *quoad* any part of the liferent they had; and the aliment was not real against the liferented lands nor them; nor that her son had any regrefs against her upon her warrandice, from her fact and deed, for diminishing her jointure, being done long before the intenting his action for aliment; and so that her jointure must be considered as it now stands, and not as it was in the beginning; and finding it so mean now, they refused to modify any thing out of it to her son. There was another point here (which the Lords did not consider) that he was major; and the act of Par-

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Aliment speaks only of minors; and though some heirs of great quality are not obliged to betake themselves to a calling; yet he was not of that rank but he might have followed an employment; and if he was bred to no other, he might have been a soldier; and this has influenced the Lords in some of their former decisions.

No 39.

Fol. Dic. v. 1. p. 31. Fount. v. 2. p. 60.

* * In the case Hay, younger of Park against his Mother, above-mentioned, No 19.;—out of 1000 merks, which was the mother's yearly annuity, L. 100 Scots was modified to the apparent heir.—And, in the case, Ramsay against Rigg, No 13. *supra*, the Lords modified L. 160 Scots out of 600 merks a-year.

Modification
of the ali-
ment.

ALIMENT *due ex debito naturali.*

1666. January 13.

WILLIAM DICK against SIR ANDREW DICK.

WILLIAM DICK pursues SIR ANDREW DICK, his father, for a modification of his aliment, whereupon the question was, Whether Sir Andrew Dick himself being indigent, and having a great family of small children, and the pursuer having been educated a prentice, whether the pursuer should have a modification.

THE LORDS considering the great portion the pursuer's mother brought; and that he was a person of no ability to aliment himself by his industry; decerned Sir Andrew to receive him in his house, and to entertain him in meat and cloath, as he did the rest, or else two hundred merks, at Sir Andrew's option.

Fol. Dic. v. 1. p. 32. Stair, v. 1. p. 337.

No 40.

A father, tho' indigent, and with a large family, bound to maintain his son who had not ability to support himself.

1672. December 10.

CARSTAIRS and her Husband, against SIR JOHN CARSTAIRS.

THE said Anna Carstairs being provided to L. 20,000, by her father's contract of marriage, which the Lords found not to be payable till after the dissolution of the marriage; and thereafter craving an aliment as being now married to a husband; and so ought to contribute *ad sustentanda onera matrimonii*: It was alleged, That in law, liferenters, or donatars to wards, are only liable for aliments; but

No 41.

An aliment is appointed to be paid to the children of an insane father, out of the estate life-