

1780. June 24. GEORGE STEWART of Stewarthall *against* CHARLOTTE CAMPBELL.

ALIMENT.

Not exigible by an Heir of Entail from an annuitant on the estate.

[*Faculty Collection, VIII. 209; Dictionary, 398.*]

BRAXFIELD. The whole argument of the pursuer proceeds on an error, that the defender is a *liferentrix*, whereas she is an *annuitant*. A liferenter may be bound to aliment the heir, but an annuitant is not: a liferenter's right is limited or extended, according to the nature of the estate possessed; but an annuitant's right of drawing out of the estate can never be either increased or diminished.

MONBODDO. I cannot easily unlearn the law, which I learned 40 years ago, that a liferenter must aliment the heir. The reason given by Mr Erskine for this, seems the true one: it was meant to support old families, and preserve the heir from starving. It is no matter whether the liferent be total or partial. I cannot make a distinction between a liferent and an annuity, for the reason of the law is the same in both cases: there may be a difference as to a liferent or an annuity constituted for a price paid.

JUSTICE-CLERK. It is impossible that this lady-annuitant can be bound to aliment the heir of entail.

HAILES. The argument of the pursuer, when carefully viewed, leads to this extraordinary conclusion, that the creditors of the defunct are bound to aliment the heir. Suppose that the widow has the first infestment, to the extent of half of the estate, in security of her annuity, and that a creditor has a posterior infestment in security of a debt to the extent of the other half of the estate, it is plain that the widow's right is preferable, and that she must draw before the creditor can draw any thing. In the case put, both will draw, but each in order. The heir appears and claims to be alimented. According to the pursuer's plea, the claim of the heir is good; but the justice of his claim will not render the widow less a creditor in competition with another creditor posterior to her in order: she must therefore make good her debt against that creditor, and thus, the subject not being sufficient to satisfy the heir, the widow, and the creditor, the creditor must suffer the abatement, or, in other words, the creditor must ultimately aliment the heir.

On the 24th June 1780, "The Lords sustained the defences."

Act. D. Rae. *Alt.* Ilay Campbell.

[*Memorials Inner-house.*]

Diss. Monboddo.