

A L I M E N T.

Of the act 1491, cap. 25. anent alimentering of Heirs.

Import of the Act:

It is ordained, that where any lands happen to fall in ward to the King, or any baron of the realm, spiritual or temporal, or lands given in conjunct fee or life-rent, as well as to burgh as to land, that the sheriff of the shire or bailies shall take surety of the person or persons, that gets or has such wards, that they shall not waste or destroy their biggings, orchards, woods, stanks, parks, meadows, or dovecots, but that they hold them in such kind as they are in the time that they receive the same; they taking their reasonable sustentation, or using, in needful things, without destruction or wasting thereof. ' And an reasonable living to be ' given to the sustentation of the air, after the quantitie of the heritage, gif ' the said air has na blanche ferme, nor feu ferme land, to susteine him on, als weil ' of the ward lands, that fallis to our Sovereine Lordis hands, as onie uther bar- ' ronne, spiritual or temporal.'

Scots Acts, v. I. p. 158.

1635. February 12.

HEPBURN *against* SEATON.

JAMES HEPBURN, brother and apparent heir to umquhile John Hepburn, his elder brother, pursues Dame Margaret Preston, relict of umquhile Sir Robert Hepburn of Alderston, their father, she being their mother, and Isobel Seaton, relict of the said brother, who were liferenters of the whole estate, whereto he was to succeed, for a modification to him, during their lifetimes; and the said Isobel Seaton *alleging*, That this action should abide continuation, and also, that the act of Parliament, which was the ground of this action, ordained modifications to be granted to the heirs of the defunct; so that this pursuer being only apparent heir, and neither being infest as heir, nor retoured heir, he could have no action upon the act of Parliament, which ought to be respected, seeing the defender has action due to her against the heir of her husband, which she cannot move against the pursuer, before he be entered heir.—THE LORDS repelled the allegiance, seeing the action was alimentary, and so needed no continuation; and also the apparent heir ought to have modification, that he might have means whereby to live, and that the act of Parliament did militate for the apparent heir; likeas the pursuit, after sentence, would furnish action against the defender, as behaving him-

NO 1.

The heir has a claim to alimentering in his own right, without service.

(OF THE ACT 1491.)

No 1. self as apparent heir to the defunct; and if she pleased also, she might charge him to enter heir, and if he refused, then she had reason to dispute, why she might be freed of this modification, or make other advantage thereby.

A.G. *Nairn.*

Alt. —.

Clerk, *Hay.**Fol. Dic. v. 1. p. 28. Durie, p. 755.*

No 2.

In a pursuit against an heir renouncing, at the instance of a liferenter, for aliment furnished, the heir assailed; because the liferenter was bound to aliment the fiar. The aliment was bestowed before the renunciation.

1667. July 16.

HAMILTON against SYMINGTON.

DAVID HAMILTON, as assignee of Robert Steel, to a bond granted by Andrew Symington, pursues Griffel Symington as representing him, for payment; who *alleged* absolvitor, because the alleged bond is manifestly null, in so far as on that side where the subscriptions are, there is only the clause of registration, and all the rest is filled on the other side with another hand, and there is not one word on the subscribed side of the matter of the bond, that might have connection with the back-side, which is un-subscribed; so that this has been the last sheet of a writ taken off, and filled upon the back, upon which any thing might have been filled up that the pursuer pleased.—The pursuer *answered*, That he opposed his bond subscribed by witnesses, which he abides by as a true deed, and is valid unless it were improven.

THE LORDS found this writ null; and yet declared, That if the pursuer could adduce writs or adminicles to astruct the same, they would examine the same *ex officio*; as the writer and witnesses, if they were alive.

The said pursuer did also *insist* against the defender for her own aliment, as having right thereto from his own son, who had married her mother.—It was *alleged* for the defender, That her mother liferented her whole estate; and so by act of Parliament was obliged to aliment the apparent heir.—It was *answered*, The defender had renounced to be heir to the same pursuer, and so could not crave that benefit.—It was *answered*, That as apparent heir, she had right to the aliment; and her offering to renounce, was but to save her from personal execution; and it could not prejudice her of her aliment, which she had received before she renounced.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 28. Stair, v. 1. p. 474.

* * * The same case is thus mentioned by Dirleton:

It was found, That the mother, being liferenter of all that could belong to the daughter as fiar and heir to her father, was obliged to entertain her; and *de facto* having entertained her, could crave nothing for her aliment, though the time she was entertained, she was only apparent heir, and thereafter was about to renounce to be heir.

Clerk, *Hamilton.**Dirleton, No 95. p. 38.*