

ALIMENT.

407

(OF THE ACT 1491.)

of. And albeit the mother offered to keep and entertain the bairn herself, upon her own charges, yet that was not sustained, seeing she was married on a husband; and the tutor and his factor was found might nevertheless crave this modification; but consideration was had of the moveable heirship due to him, which proportionally bore a part of the modification.

No 36.

A&C. Nicolson.

Alt. Oliphant.

Fol. Dic. v. 1. p. 31. Durie, p. 573.

1627. July 14.

NOBLE *against* NOBLE.

JOHN NOBLE, tutor to Alexander Noble, his pupil, having obtained the pupil delivered to him in presence of the Lords, by a preceding decret, obtained by him against the mother of the bairn, and her husband, detainers of the bairn for the time; he now pursuing the said pupil's mother and her husband, who was in feft in liferent, and was in possession of his whole lands; and who also had the gift of his waird and marriage, for an yearly modification, to be given for the entertainment of the said bairn; and the defender's compearing and offering to entertain the bairn herself, and to keep him:—THE LORDS admitted the mother's offer to entertain and keep the bairn herself; and found, in respect thereof, that the bairn ought to be delivered to her for that effect, and therefore that no modification ought to be given to the tutor; which was so found; albeit, that by a preceding sentence, as said is, against the mother, the bairn was decerned to be delivered by her to his said tutor; and that, conform thereto, the bairn was in the tutor's keeping; and also, albeit the mother was married with a second husband.

No 37.
To the same effect with the above.

This was thereafter altered, and the bairn ordained to remain with the tutor, and the action for aliment sustained. (See TUTOR and PUPIL.)

Clerk, Gibson,

Fol. Dic. v. 1. p. 31. Durie, p. 310.

1679. February 19.

SIBBALD *against* FALCONER.

SIBBALD of Kair, pursues Sir Alexander Falconer, donatar to his ward, for a modification for his aliment, both for bygones and in time-coming. The defender *alleged*, *imo*, Absolvitor from bygones, because aliment is only due in the case when the heir cannot be entertained otherways, as neither having feu or blench-lands, moveables, or calling; but here this heir was alimented by his mother; and is neither engaged nor distressed for satisfaction thereof, nor cannot for years since his pupillarity; because the Lords have oft-times found, That enter-

No 38.
A donatar of ward, found liable to aliment the heir, whether he had introduced or not, unless he instructed how he was bar-