(OF THE ACT 1491.)

——THE LORDS repelled this defence; and found, by the ſaid act of Parliament, that donatars of ward, and all conjunct fiars and liferenters, ſhould uphold the lands liferented, and aliment the heir.—It was *alleged* for the old Lady, That the purſuer's father having burdened his eſtate ſo, that nothing was free above the liferents, his heir could not return to burden her liferent, albeit he might burden his mother's liferent, who ran the hazard of her huſband's fortune, and had ſo near a relation in blood to her ſon, but the grand-mother was a ſtranger; and if the grand-father had diſponed his eſtate to his ſon, and reſerved his liferent of a part, if the ſon had dilapidate the fee, the grand-father would not be liable to an aliment; ſo neither ought the grand-mother; much leſs the grand-father's ſecond wife. And as to the caſe of the grand-father, it was ſo decided in the caſe of the Laird of Silvertounhill obſerved by Durie; and in the caſe of the Laird of Lamington againſt his Grand-father, decided in the proceſs at the inſtance of Sir John Whitford againſt Lamington, February 26th 1675, No 20. *ſupra*. No 21.

THE LORDS found both the liferenters liable, *pro rata*, according to their liferent; there being nothing here of the caſe of the grand-father's diſponing the eſtate, with reſervation of his own liferent.

Fol. Dic. v. 1. *p.* 29. 30. *Stair*, 2. *p.* 576.

1709. *February* 15. BONAR *againſt* BONAR.

No 22.
An idiot is not to be conſidered as a liferenter, ſo as to be liable in aliment to the next heir.

MR JOHN BONAR of Greigſton having been declared fatuous, and an idiot, by the Lords, about ſix or ſeven years ago, and ſo found by an inqueſt; and Maxwell of Lekiebank being named by the Exchequer, his tutor-dative, for adminiſtrating his eſtate, extending to twelve or thirteen hundred merks per annum, Margaret Bonar, his brother's daughter and apparent heir of line, purſues her uncle and his tutor for an aliment, having no other way to ſubſiſt *aliunde*; and ſeeing his eſtate is ſufficient to aliment them both, it is but reaſonable the Lords modify the ſame to her, being as yet an infant. *Alleged*, 1*mo*, *Non conſtat*, ſhe is either preſumptive or apparent heir, ſeeing the lands may be tailzied to heirs-male. 2*do*, *Esto* they were not; there is neither law nor practice for aliment in this caſe; for our acts of Parliament have ſuſtained ſuch proceſſes at the inſtance of fiars, againſt liferenters poſſeſſing the greateſt part of their eſtates; but it was never pretended that a fiar, having the abſolute diſpoſal of his own eſtate, can be burdened with an aliment to his apparent heir, on the pretence of a remote view of ſucceſſion.—*Anſwered*, The ſpecialty here, giving riſe to an aliment, is his fatuity, by which he is ſo bound up, that he can neither diſpone nor alienate, and ſo is upon the matter a naked liferenter, in which caſe the adverſe party yields an aliment may be craved; and ſo it is but an eaſy extenſion of the law, *a paritate rationis*, to a caſe equally favourable; and the Lords have found an elder

No 22. brother bound *ſuper jure naturæ* to aliment his younger brother, 24th January 1663, children of Netherlie, (*See* the next diviſion of this Title); 29th June 1676, Row *contra* Row, (Stair, v. 2. p. 434. *See* PRESUMPTION); and there is as good reaſon that the uncle, (who requires no more but an aliment himſelf,) ſhould maintain his poor indigent niece.——THE LORDS thought the demand altogether new, without law or preſident, and that the circumſtance of his fatuity did not alter the caſe; for he might reconvaleſce, and this might be as well craved if the fiar were an infant, who could be maintained on a ſmall expence; and therefore found no ground for modifying an aliment in this caſe, but aſſoilzied the defender from the libel, as altogether irrevalent.

Fol. Dic. v. 1. *p.* 30. *Fountainhall, v.* 2. *p.* 493.

1722. *February.*

HUGH, MASTER of Lovat *againſt* Captain SIMON FRASER.

No 23. Donatar of eſcheat liable.

THE eſtate of Lovat was ſettled in liferent to Fraſerdale, and in fee to his ſon. Fraſerdale having forfeited his liferent eſcheat, the LORDS found the donatar liable to aliment the fiar, who had no ſeparate eſtate for his ſubſiſtence.

Fol. Dic. v. 1. *p.* 30.

1729 *January* 24. LAING *againſt* KAY.

No 24. A man diſpones to his wife in liferent, and to his nephew in fee. The nephew's child, in particular circumſtances, not entitled to be alimented by the liferenter.

ONE having diſponed his lands in favour of his wife, her heirs and aſſignees, with this *proviſo*, That after her death, a certain portion thereof ſhould accreſce and belong to his nephew; the nephew's daughter and only child, after her father's deceaſe, intented action againſt the wife for aliment, as apparent heir to her father and grand uncle. The defence was, That there was no relation betwixt the purſuer and defender, and therefore no aliment due *ſuper jure naturæ*. 2*do*, The defender liferents no lands, to which the purſuer can ſucceed as fiar. 3*tio*, The purſuer's father was denuded of this claim, in his own lifetime, having diſponed the ſame to his creditors, for their ſecurity and payment, and to his wife whatever ſhould remain.——The purſuer was not found entitled to any aliment.

Fol. Dic. v. 1. *p.* 30.