of a sister, lies against her brother only as representing their father, and does not extend against a brother, who represents only his grandfather; 25th June 1761, Seton and Patersons against Paterson, No. 67. p. 429. No. 2.

Answered: The Court have enforced the moral obligation to afford aliment in cases of a very similar nature; 15th December 1786, Lowther, No. 71. p. 435. Besides, the eldest son possessing the family estate, has been found liable in aliment to his sister, where he represented their common grandfather; 11th February 1764, Younger Children of Seton against the Heir, No. 68. p. 431; 14th December 1788, Dalziel against Dalziel, No. 84. p. 450; and there is no good reason why the representing a great-grandfather should not have the same effect. It may be said, that by ascending to remote ancestors, the obligation to aliment might be extended in favour of distant relations; but, in all cases, the Court will pay regard to the relative situation of the parties, and will sustain the claim, on the footing of the defender's representing a common parent, when it is made at the instance of a sister, although they would repel it if made by a cousin.

The Court ordered memorials; on advising which, several of the Judges were for supporting the claim. The rest so far agreed with them, as to be clearly of opinion, that every disbursement made by the defender's tutor in the maintenance and education of Miss Clerk in a style suitable to her rank, would be sustained in accounting with his pupil; but they thought that there was no ground in law which entitled them to award the pursuer a specific aliment.

The Lords accordingly found, "That, in the circumstances of this case, the "pursuer has no such claim of aliment against her brother, as can be enforced "in a court of law; and therefore assoilzied from the present action, and de-"cerned; without prejudice to any discretionary power which the tutor may "be advised in such a case to exercise; and reserving all questions of account-"ing between him and his pupil, when the term of his office expires."

Act. *Ro. Craigie.* Alt. *H. Erskine.* Clerk, *Sinclair.*

R. D. *Fac. Coll. No.* 112. *p.* 255.

1799. *July* 6.

The CREDITORS of JOHN NEWLANDS, *against* JOHN NEWLANDS, junior.

No. 3.
The creditors of a liferenter are not bound to aliment the fiar.

DURING the dependence of the question between John Newlands *junior* and the creditors of his father, No. 73. 4289. with regard to the fee of certain heritable subjects destined to the father "in liferent, for his liferent use "allenarly, and his children *nascituri* in fee," the Court, with consent of the creditors, granted young Newlands an aliment of £30 yearly.

But the judgment of the Court, finding that the fee could not be attached for the debts of the father, having been affirmed on appeal 26th April 1798,

No. 3. the creditors presented a petition, craving, That the allowance should be discontinued, and stating, that they had formerly consented to it, in hopes that the fee would have been found liable for their debts, in which case there would have been a reversion. These hopes were now disappointed, and they were under no legal obligation to aliment the son of their debtor.

It was represented for young Newlands, who was still a pupil, that during his father's lifetime he was totally destitute of funds for his aliment and education.

The Court, on advising the petition, with minutes, granted the prayer of it.

Lord Ordinary, *Meadowbank*. For the Petitioners, *Hope*. Alt. *W. Erskine*. Clerk, *Sinclair*.

D. D. *Fac. Coll. No.* 138. *p.* 311.

1802. *February* 28. TAIT *against* WHITE.

No. 3.

Aliment due *ex debito naturali* to the grandchild, by a grandfather, when the father is unable to support it.

MARY TAIT being deserted by her husband, who had left the country, presented a petition to the Sheriff of Selkirkshire, praying that William White, tenant in Caddenlee, her husband's father, should be ordained to aliment her and her infant child.

The Sheriff, at first (4th October 1797) dismissed the process; but he afterward (21st March 1798) altered that interlocutor, and found the grandfather liable in the maintenance of the child, to which he adhered, (23d January 1799), by refusing a petition, "reserving to him liberty to apply to the Court, "either in the event of the child's father returning to the country, or of the "child being able to provide for its own maintenance."

Lord Bannatyne Ordinary (19th December 1800) refused a bill of advocation of this sentence; to which Judgment the Court (4th July 1801,) on advising a petition with answers, adhered.

The defender again reclaimed, and

Pleaded: The duty of providing for near relations being of the nature of charity, should be left to the consciencies of those who feel called upon to exercise it. Cases, however, have occurred, where the Court, as a court of equity, have enforced this natural obligation. Were the defender a man of rank and fortune, to which the child was eventually to succeed, there might be room for the action upon the act 1491, c. 25. which requires, that a reasonable living be given to the sustentation of the heir, after the quantity of the heritage; Mirry against Pollocks, July 1731, No. 25. p. 397.; Lawder, 1st March 1762, No. 26. p. 398. Farther than this, the duty of giving aliment has not been extended; but in the present case, the child's father was a common labourer, and the defender himself is little better, with eight children of his own to maintain.

The question is properly a competition between the defender and the managers of the poor's funds of the parish. From them the child must be alimented; and there seems no propriety in making the grandfather relieve them from this burden.