(OF THE ACT 1491.)

1762. *March* 1.

HELEN ADAM *against* Sir ANDREW LAUDER of Fountainhall.

No 26.
The proprietor of an entailed eſtate, found obliged to aliment his ſon's wife.

SIR ANDREW LAUDER's eldeſt ſon, a lad of twenty, living *in familia* with his father, made a runaway marriage with Helen Adam, a ſervant maid of the houſe; and immediately after quitted her, and went off to the Eaſt Indies, where he ſettled.

Helen Adam brought an action of aliment againſt Sir Andrew, his father, poſſeſſed of an entailed eſtate of L. 250 clear rent.

Objected by Sir Andrew, 1*mo*, He has but a ſmall eſtate, and eleven younger children, without one penny to give them, except what he can gather by his annual ſavings, ſeeing his eſtate is entailed. In ſuch a ſituation, the law could not mean to ſubject the father to the aliment of his eldeſt ſon's wife.

2*do*, At any rate, the ſon is primarily liable, the father only *ſubſidiarie*; but the purſuer, as yet, has not brought any action of aliment againſt her huſband.

THE LORDS found the defender liable to aliment.

Act. *Jo. Dalrymple.* Alt. *R. Bruce.*

Fol. Dic. v. 3. p. 22. Fac. Col. No 86. p. 190.

M'Laurin.

1780. *June* 24. GEORGE STEWART *against* MRS CHARLOTTE CAMPBELL.

No 27.
Aliment not exigible by an heir of entail, from an annuitant on the eſtate.

JAMES STEWART of Stewarthall, executed an entail of his eſtate, with the uſual clauſes, and likewiſe under this condition; 'That the heirs of entail 'ſhould be obliged to apply L. 100 yearly of the rents towards the extinction of 'the debts with which the eſtate was affected.'

He afterwards married Mrs Charlotte Campbell; and, in virtue of a power reſerved in the entail, he ſettled on her a jointure of L. 130 *per annum*.

George Stewart, though a very diſtant relation, ſucceeded as firſt heir of entail; when he found the ſituation of the eſtate ſuch, that, after payment of the jointure, the rents of the lands, which amounted to L. 246, fell conſiderably ſhort of the other annual burdens. He had no ſeparate funds; nor did he practiſe any calling to earn his ſubſiſtence; for, though he had been bred a ſailor, and was ſtill a young man, he had withdrawn himſelf from that way of life.

He therefore claimed an aliment from the widow, as liferentrix of ſo large a part of the produce of the eſtate; and having raiſed an action on that ground, is was

Pleaded for the defender: The defender is, by her marriage-contract, an onerous creditor on the eſtate, and is not bound to aliment the purſuer, her debtor.

Nor can he claim an aliment from her as liferentrix; for in fact ſhe is not ſuch, being a creditor on the eſtate for the annuity payable by that contract. At any rate, there is reaſon to doubt if ſuch a claim, made by fiars, ever had any proper foundation in the law of Scotland; but certainly it cannot be ſupported, when coming from a healthy young man, able, like the purſuer, to earn his livelihood by his labour; Erſkine, p. 333. No 27.

Anſwered: It is now an undoubted rule, that liferenters are bound to aliment ſuch fiars as are otherwiſe deſtitute of any fund of ſubſiſtence. It was eſtabliſhed, in the caſe of wardholdings, by act of Parliament 1491, cap. 25. and has been, by practice, extended to that of every kind of holding; as it is evident from Dictionary, *voce* Aliment; whence it likewiſe appears, that this claim has never been denied, except either where the heir poſſeſſed ſeparate means of ſubſiſtence, that, in the preſent caſe, are far from occurring, or where the ſcanty circumſtances of the liferenter did not admit it; which ſurely cannot be ſaid of the defender, who has obtained L. 130 of jointure for her tocher of L. 500.

The Court diſtinguiſhed the caſe of an annuitant from that of a liferenter; a diſtinction eſtabliſhed in the caſe of Mirrie *contra* Pollock, July 1731, Remark. Deciſ. No 25. *ſupra.*

'THE LORDS therefore ſuſtained the defences.'

Act. *Dav. Rae.* Alt. *Ilay Campbell.* Clerk, *Tait.*
Stewart. *Fol. Dic. v.* 3. *p.* 22. *Fac. Col. No* 112. *p.* 209.

1780. *August* 10. ISABEL MEARNS *againſt* REBECCA GIBBON.

No 28.
Aliment not due by a father's repreſentatives.

REBECCA GIBBON, the widow of John Mearns, by a ſecond marriage, was his univerſal diſponee. Iſabel Mearns, who was his only child, and born of the former marriage, purſued her for an aliment. The latter was then upwards of fifty years of age, a widow alſo, and had formerly received her portion from her father.

The Court appointed the purſuer to give in a condeſcendence of her age and circumſtances; from which it appeared ſhe was able to earn the means of ſubſiſtence by her labour. But, as they conſidered a claim for aliment, though competent againſt parents, or other very near relations, *ſuper jure naturæ*, not to be tranſmiſſible againſt their repreſentatives, by which it might be extended very far indeed; this appeared to be the ground upon which

THE LORDS 'aſſoilzied from the claim of aliment.'

Act. *Buchan-Hepburn.* Alt. *Hay.*
Stewart. *Fol. Dic. v.* 3. *p.* 22. *Fac. Col. No* 124. *p.* 229.