

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 advocacy 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 consciences 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.

The pursuer

No. 3.

Answered: The only object of the statute 1491, was to compel a liferenter to support the heir of the estate. This case is now entirely cut off by the act abolishing wardholdings; but the spirit of it has been preserved, and the obligation of aliment has been much extended beyond the provisions in that enactment. The ties of relationship, and the natural duty of individuals, are equally strong in every class of society, and the natural obligation to aliment their children is equally general; nor is this a hardship, while it is accurately proportioned to their respective rank and ability; Dict. *voce* ALIMENT (*due ex debito naturali*;) Ersk. B. I. Tit. 6. § 56.; Blackst. Comm. B. I. C. 16. p. 448.

Before the case was advised, the father of the child had returned to this country, and was sisted in Court, but it was not thought that this could alter the judgment, as the grandfather had only been found liable *subsidiariè*, leaving to him to apply for relief, if the father could support the child.

It seemed the first time that this question had ever been tried in the case of a peasant, and the hardship of laying down a general rule in a case such as this, was strongly urged; entailing upon a poor and industrious race of men, the burden of maintaining the numerous families of their children, at a time when their years and their labours merited a different reward. But the view taken by the majority of the Court was, that every man, according to his means, was bound to support his children, and their descendents, whenever it became necessary. The reason of its having been formerly confined to landed men, was, that formerly these were almost the only persons, possessed of wealth; but now that other classes of the community share with them in the opulence of the country, this natural obligation must extend with the means of fulfilling it.

“ The Lords (23d February 1802) adhere to their interlocutor reclaimed  
“ against, in so far as to find the petitioner liable to the pursuer in an aliment  
“ to his infant daughter, at the rate of £6 yearly from the time of her birth in  
“ March 1797, to the return of her father William White to this country in  
“ the month of December 1800.”

Lord Ordinary, *Bannatyne*.  
Alt. *Cathcart*.

For the Pursuer, *Boswell*.  
Agent, *D. Murray*, W. S.

Agent, *W. Riddell*, W. S.  
Clerk, *Pringle*.

E.

*Fac. Coll. No. 24. p. 47.*

1802. March 6.

RIDDELLS *against* RIDDELL.

HENRY RIDDELL died, leaving seven children under age, having executed a trust-settlement of his estate, providing each of his younger children to the extent of £3000, half of this sum not payable till after the death of the mo-

No. 4.  
Younger children, whose provisions are