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.