No 60. none but only one, whereas there might have been many; the LORDS ought to modify that aliment in favour of the one. *Duplied*, The provision properly flowed from the mother, who, in favour of her children, put herself in worse case than if she had none; and though the lands be comprised, that cannot prejudge the child's aliment; nor ought the creditor to be in better condition, than if the child were dead; and, for the same reason, the aliment ought not to be modified.

THE LORDS preferred the child to the superplus duties for his aliment.

Gilmour, No 167. *p.* 118.

No 61. 1667. *February* 1. EARL of TULLIBARDINE *against* MURRAY.

THE reversion of a wadset being conceived to the heirs and assignees of the reverser's own body, an order of redemption was not sustained, being at the instance of an assignee, who was not of the reverser's own body.

Fol. Dic. v. 2. *p.* 75. *Stair.*

*** This case is No 43. p. 7206. *voce* IRRITANCY.

No 62. 1668. *July* 8. BOGG *against* DAVIDSON.

If a bankrupt has obtained decree of *cessio bonorum*, a fee given him for service, equivalent to an aliment, is not arrestable.

ROBERT DAVIDSON being debtor to Hugh Bogg by bond, and becoming bankrupt, did obtain a decreet, freeing him from personal execution, *a cessione bonorum;* and thereafter being employed by the Magistrates of Edinburgh in Heriot's Hospital, for which he had a fee allowed him during his service, the said Hugh did arrest the fee, and pursued to make furthcoming; which action was not sustained, unless it were condescended and proved, that he had more than a reasonable aliment; for the LORDS found, that, so far as it was an aliment, it could not be arrested, it being in the power of Magistrates to deprive both him and the creditors thereof.

Gosford, MS. No 24. *p.* 49.

*** Stair reports this case:

1668. *July* 9.—HUGH BOGG having arrested Robert Davidson's fee, as keeper of Heriot's Hospital, pursues the Town of Edinburgh to make it forthcoming; it was *alleged* for Robert Davidson, Absolvitor; because Robert Davidson had made *cessionem bonorum*, in favour of this pursuer and his other creditors, and thereupon was assoilzied. The pursuer *answered*, That a *bonorum* did noways secure *contra acquirenda*, unless the assignation or disposition had been equiva-

lent to the debt, and satisfied it. The defender *answered*, That that which was here acquired was only a fee for service, which is alimentary, and the fee will not be due, unless the defender serve in suitable condition, effeiring to his place; and, therefore, it cannot be made forthcoming to any other use. No 62.

THE LORDS found, that a fee, in so far as was necessary for the servant's aliment, conform to his condition of service, could not be reached by his creditors, to whom he had made *cessionem bonorum*, except as to the superplus, more than what was necessary; and they found no superplus in this case.

Stair, v. 1. p. 550.

1671. *July* 20. LINDSAY of Mount *against* MAXWELL of Kirkconnel.

No 63.
The power given to debtors, by act 62. parl. 1661, to restrict appriseers to their annualrents is purely personal, and not extended to any coming in place of the debtor by diligence.

LINDSAY of Mount being donatar to the ward of the estate of Kirkconnel, by the death of the late Laird, and minority of this Laird, pursues the tenants for mails and duties. Compearance is made for the apparent heir, as having right by disposition from his grandmother to an apprising, led at her instance against her son, and *alleged*, That there could be no ward; because Kirkconnel, the King's vassal, was denuded before his death, and his mother, as appriser, was infeft. It was *answered*, 1*mo*, That this apprising was upon a bond granted by the defunct to his own mother, for the behoof of his son and apparent heir, without any onerous cause, and so was null and simulate, and a fraudulent contrivance, in prejudice of the King as superior, of his casualty of ward; and that it was found in the case of the Lord Colvil, No 30. p. 8529. that a vassal having married his apparent heir *in lecto*, it was found a fraudulent precipitation, in defraud of the ward. It was *answered*, That the allegeance was not relevant; because, there was nothing to hinder the defunct to have resigned in favour of his apparent heir, without any cause onerous, or to grant him a bond, that he might be infeft upon apprising, or to grant such a bond to any person to the heir's behoof, he being in *liege poustie*; and there can be no presumption of fraud, seeing he might have obtained his son infeft directly, which the King refuses in no case, when the granter is in *liege poustie*.

THE LORDS repelled the allegeance for the donatar, and sustained the apprising.

The donatar further *alleged*, That, by the act of Parliament 1661, betwixt debtor and creditor, it is provided, that the debtor may cause the appriser restrict himself to as much as will pay his annualrent, and the debtor may bruik the rest during the legal; and now the donatar is in place of the debtor; so that, what superplus there is more than will pay the appriser's annualrent, must belong to the donatar. It was *answered*, That this clause is peculiar, and personal to debtors, and cannot be extended to donatars, who are not men-