

(OF THE ACT 1491)

creditor-adjudger. It is true, these aliments were a stretch and extension of James IV's act, and were more *actus imperii* than *jurisdictionis*, but were never extended to a creditor's heir: And the case of Hepburn *contra* Seaton, 12th February 1635, No 1. *supra*, (and a hard decision it was) sustained the aliment; but there was no renunciation there. And Sir George M'Kenzie, in his observations on that act of Parliament, reasons against these extensions with great freedom and evidence; nor have the decisions been uniform on which the authority *rerum judicatarum* stands; but this is the fate of all decisions which arise from no certain principles of law; and, as to such, all occasions are to be taken to restore them back to the true principles of justice and equity.—3to, *Alleged*, At her husband's death, the fortune was in a tolerably free condition, and the burdens being supervenient, they cannot prejudice her liferent, or draw an aliment on her, especially he having his mother to recur to, who is bound *jure naturæ* to maintain him; and was so found in President's Falconer's Decisions, 7th February 1682, Hamilton, No 8. *infra*.—*Answered*, That is but a single practice; but the current has been, that the liferenters, both old and new, take the burden proportionally effecting to their quotas; for *quem sequitur commodum eundem sequi debet etiam incommodum*; and the mother, out of her small aliment, has hitherto maintained him.—THE LORDS found the Lady Carfe not liable in any part of his aliment, especially he bruiking by special singular titles, and having renounced to be heir.

*Fount. v. 2. p. 707.*1700. *January 27.* SANDILAND *against* his MOTHER.

SANDILAND of Cowston pursues his mother for an aliment, as liferenting his whole estate. *Alleged*, The lands came by myself, which I disposed to your father in our contract: I educated you a writer; but you deserting that, I bought you an ensign's place in the army, where you were likewise turned out, and married unworthily, and have sold the fee of the lands worth 2000 merks *per annum*, whereof I only liferent the half; and so an aliment being only due to an apparent heir, or a fiar, you are neither, but are denuded; and what rests to me is no more than a competency.—*Answered*, He can be in no worse case than an heir left with an overburdened estate by adjudications, and other diligences and rights, whether legal or conventional; and though they have renounced to be heirs, yet they have been allowed to crave an aliment off liferenters, 16th July 1667, Hamilton *contra* Symington, No 2. *supra*; *ergo a pari* a fiar who has sold his heritage for his father's debt may pursue his mother for an aliment, though he be major.—THE LORDS found this defence relevant to assilzie from an aliment, that he was denuded of the fee of the whole by an irredeemable disposition made by himself; and granted diligence to the defender to prove it, seeing he was no more fiar.

No 4.

A fiar has no longer title to aliment, upon the act of Parliament, after he has sold the lands.

*Fol. Dic. v. 1. p. 28. Fount. v. 2. p. 84.*

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No 3.