

was found 9th July 1668, *Bogg contra Davidson*, No 62. p. 10380; but if it exceed the bounds of a suitable aliment, conform to the parson's equality, (which is to be modified and determined by the Lords), then the excess may be affected by creditors.

*Fol. Dic. v. 2. p. 77. Fountainball, v. 2. p. 265.*

No 73

1705. June 22.

Mr WILLIAM IRVING, Minister of the Gospel, *against* PATRICK CRAWFORD, Merchant in Edinburgh.

THOMAS GORDON being debtor to the Earl of Cassillis, Mr William Irving, to whom the Earl was debtor, arrested first in the hands of Gordon, and obtained a decret of forthcoming; then he arrested in Patrick Crawford's hands, as debtor to Thomas Gordon, and pursued a forthcoming, wherein the defender deponed, "That he was noways debtor to Thomas Gordon, but only in so far as by a decret-arbitral he is decerned to pay to him and his wife in liferent for their aliment the annualrent of 3000 merks, and the fee to their children, which sums are declared not affectable by Thomas Gordon's creditors."

*Alleged* for Crawford; That he could not be decerned against in the forthcoming, the annualrent of the 3000 merks due to Gordon being alimentary, and not affectable by his debts.

*Replied* for the pursuer; The 3000 merks being the proper effects of Thomas Gordon, neither he nor the arbiters could alter or invert the nature thereof by making it alimentary, or declaring it not to be subject to the diligence of his creditors; for no man needed to trouble himself about the payment of his debts, if he could declare his own estate free from diligence.

THE LORDS found, That after Gordon was debtor to the Earl of Cassillis, the decret-arbitral could not prejudice the Earl; and consequently that the annualrent of the 3000 merks was arrestable.

*Fol. Dic. v. 2. p. 77. Forbes, p. 10.*

No 74.

A debt payable to one by a decret-arbitral, arrestable by a creditor to him, before the decret, altho' it was therein declared alimentary and not affectable by creditors.

1705. July 5.

CLELAND'S CREDITORS Competing.

IN the competition betwixt William Hamilton of Wishaw, and the other creditors of Cleland of that ilk, Wishaw craved preference to them all for L. 721 Sterling, on this ground, That Cleland being collector of the cess and supply for the shire of Lanark in 1701, and Wishaw his cautioner, he fell in arrear to the general receiver, and commissaries of the army, in that sum, so that Wishaw being forced to pay it, he has got an assignation thereto; and the public being a privileged creditor, he, as come in their place, has the same privilege; wherein he endeavoured to clear the Lords on these two points, *imo,*

No 75.

The assignee of the fisk found to have right to the privileges of the fisk.

No 75.

That the fisk had a real privilege on the lands and estates of their collectors, preferable to their other creditors; *2do*, That this was not so personal, but it transmitted to their assignees. As to the *first*, The civil law was full on it, preferring *causam fisci et privilegium primipilare*, both as being a public concern, and to have the government and army effectually supported; and our law has made not only the Commissioners of Supply, and the collectors, liable for the public cess imposed by acts of Convention or Parliament; but even it becomes a *debitum fundi* on every heritor's land; and so by the acts in 1673 and 1681, and subsequent acts of supply, it affects singular successors, and is liable to quartering and all other diligence, and so is preferable to any other private debts. And as to the *2d*, Where cess is paid by the collector's cautioner, and is assigned, he has the same access and relief that the public had. See 28th July 1665, Rae, *voce* PUBLIC BURDEN; 10th June 1631, Peebles, *voce* PRIVILEGED DEBT; *ult.* January 1665, Anderson, No 39. p. 6235; and lately, Houston, the King's collector, against Creditors of Montgomery, see PRIVILEGED DEBT. *Answered*, This privilege is only *quoad* the manner of execution, but not as to co-creditors. Other civil debts have the executorial of horning, poinding, and arrestment for affecting the debtor's means; but for better ingathering of the public revenues, law has superadded the summary diligence of quartering and military execution to distress their lands or moveables; so that the soldiers may quarter ay till they pay; but if the public be once satisfied, this personal privilege ceases, and nowise transmits to their assignees, no more than the King's privileges can be claimed by donatars to escheats or forfeitures. THE LORDS superseded to determine what preference the cess had beyond other debts; but thought, whatever the privileges were, the assignee had them in the same manner that the cedent and the public, his author, had before their denuding.

*Fol. Dic. v. 2. p. 78. Fountainhall, v. 2. p. 282.*

No 76.

The fees of a Commissioner to Parliament not arrestable as being alimentary.

1707. March 18. FRANCIS MOLISON, Merchant in Brechin, Supplicant.

FRANCIS MOLISON having represented to the Lords, by a bill, that Alexander Young, William Clark, and John Spence, Merchants in Brechin, had unwarrantably arrested, for some pretended debts, his commissioner-fees for the Town of Brechin; in so far as, seeing the person of any representative in Parliament cannot be attacked for debts during the sitting thereof, neither can the fees destined for defraying the commissioner's charges be affected by arrestment or diligence; these fees being in effect aliment, like fees given by the Queen to her servants, which are not arrestable.

*Answered* for the arresters; That they know no positive law excoeming commissioners to the Parliament from personal execution; albeit by custom where Members of Parliament have been imprisoned upon legal diligence, the Parliament has sometimes given order for their liberation; and, unless the Parliament