

they were overvalued or wronged in their quota, they would have been heard ; but they have said no such thing. And whenever they put the manse in a habitable condition, and agree on his grass, then this rent will cease, and the heritors will be free of the demand.

The Lords refused the bill, and repelled the reasons of suspension, in respect of the foresaid answers.

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1708. *February 3.* HELEN HAMILTON and THOMAS MUTTER *against* JAMES ALSTON.

JAMES Alston, merchant, being debtor to Helen Hamilton in 700 merks by bond, and she, and Thomas Mutter her husband, having charged him, he suspends, that he had obtained a *cessio bonorum* in 1662, as not able to pay his debt, by some losses and misfortunes ; in which decret this woman is expressly called.

ANSWERED,—That being an extraordinary remedy, founded on commiseration and mercy to our human nature, so long as his indigent difficulties lasted they were not to grudge ; but now his circumstances being altered, and he having enjoyed a lucrative and beneficial place, as clerk to the kirk-session of Edinburgh, these nine or ten years bygone,—he ought not to protect and screen himself under his *bonorum* ; for law says,—If such a debtor come *ad pinguiores fortunam*, and grow richer, then he is convenable, though not *in solidum*, yet *in quantum facere potest* ; he enjoying *beneficium competentie* : as appears from Suedewin, *ad sect. ult. Instit. De Act.*

REPLIED,—The office he enjoys from the Town of Edinburgh is precarious, and may be recalled at their pleasure ; and its emoluments and perquisites are no more than a precise aliment to him and his family : likeas, when he obtained his *cessio*, he gave a general disposition to his creditors of all his effects, whereof this charger may reap the benefit if she pleases.

DUPLIED,—If he will produce his count-books of his income by the place he now enjoys, it will evidently appear that he has a considerable excresce above a suitable aliment and subsistence ; and the chargers crave only a part of that, conform to the Lords' modification, *first*, what may fairly serve him as an aliment ; and *2dly*, what share they shall get of the superplus. And it were iniquitous to suffer him, by such artificial methods, to cover his so gainful acquisitions from his creditors, that being too thin a veil to palliate so transparent machinations to defraud creditors. And this is no new practice ; for, in the case of *Beg and Davidson*, *9th July 1688*, Beg having arrested Davidson, preceptor in Heriot's Hospital, his salary and fee ; and it being alleged, That it was alimentary, and so not arrestable, and that he had a decret of *bonorum* ; yet the Lords found, in so far as it exceeded a just and rational aliment, the same was affectable by his creditors, notwithstanding of his *bonorum*.

The Lords resolved to hear the case more fully, before they should determine its relevancy *in jure*.

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