No. 2.

There was no analogy betwixt an executor confirmed and an heir *cum beneficio*: The office of an executor inferred no representation; nor in that case was there at common law any *pari passu* preference among the creditors, which had only been introduced by the act of sederunt 1662. The estates being sold by authority of the Court could make no alteration; and as the sale confessedly was not brought according to the regulations of the statute 1695, it was absurd to suppose that the rules incident to that enactment could be held as applicable.

The Court unanimously adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Kennet*. For Reid, &c. *Macqueen*. For Ronaldson, &c. *G. Ogilvie*.

R. H. *Fac. Coll. No. 73. p. 213.*

1773. *February* 26.

JAMES NEIL, Writer in Air, *against* JOHN BROWN, Merchant in Glasgow, Trustee for JOHN and ABRAHAM CLEGG of Manchester, and THOMAS and GEORGE MALTBY of London.

No. 3.

An arrestment, *debiti servandi causa*, upon an admiral precept, without previous citation of the common debtor, in a cause not maritime, found irregular, and also not founded in the practice of the admiral-court.

NEIL being creditor to William Harris, merchant in Air, by an accepted bill, caused arrest, on the 17th October 1768, in virtue of a horning, in the hands of Mary White, as debtor to Harris, and afterward obtained decree of forthcoming against her, who suspended, and brought a multiple-poinding, on the ground of double distress.

Brown produced an interest, which consisted of a decree of forthcoming, obtained, at his instance, before the high-court of admiralty, against the said Mary White, and Harris, the common debtor, founded upon two small bills, drawn by John and Abraham Clegg, and Thomas and George Maltby, upon Harris, payable to Brown, but not accepted by Harris.

Neil objected to Brown's interest, on this medium, that his arrestment was *funditus* void and null, as being *filius ante patrem*, being an arrestment without a dependence; for, until the common debtor was cited, there could be no depending action; and as, in this case, the common debtor was not cited by Brown, till long after his arrestment on the admiral-precept, and after the arrestment, used by Neil, Brown's arrestment was good for nothing, and his fell to be preferred.

The Lord Stonefield Ordinary sustained the objection by several interlocutors: "In respect the arrestment used by Brown was executed before a dependence was created by citation of the common debtor, and that Neil's arrestment was regularly executed, previous to the citation at Brown's instance."

Against these judgments, Brown having reclaimed, the court, upon advising the petition, with answers, ordered memorials on the cause, and, particularly, as to the practice of the admiral-court, and how far such arrestments as Brown's had been sustained.

No. 3. Memorials having been accordingly given in,

"The Lords, in respect the arrestment used by Brown was not in a mari-"time cause, therefore adhered to the Lord Ordinary's interlocutor." And again adhered, on a reclaiming petition and answers.

Act. *M'Laurin.* Alt. *Ilay Campbell, J. Boswell, Cullen.* Clerk, *Tait.*

Fac. Coll. No. 64. *p.* 155.

1801. *June* 9. WILLIAM LAIDLAW *against* JOHN WYLDE.

No. 4.

The exemption of members of the College of Justice from inferior judicatories, must be pleaded in the inferior court.

Professors' salaries are arrestable, *salvo beneficio competentiæ.*

WILLIAM LAIDLAW obtained decree before the Sheriff of Edinburgh against Mr. John Wylde, advocate, Professor of Civil Law in the University of Edinburgh, for payment of a bill accepted by Mr. Wylde, to which the pursuer had right by indorsation. No objection was there stated to the jurisdiction of the Sheriff. Upon this decree, the pursuer arrested Mr. Wylde's salary in the hands of the Magistrates of Edinburgh.

Mr. Laidlaw raised a forthcoming, and afterward, (other creditors having appeared), a multiplepoinding, in name of the Magistrates, both in the Court of Session.

The Lord Ordinary having preferred the pursuer in terms of his libel; in a petition for Mr. Wylde, who enjoyed a pension from the Crown, it was, *inter alia,*

Pleaded: 1*mo*, The decree of the Sheriff was null, as pronounced against a member of the College of Justice, who was not subject to his jurisdiction; Bankt. B. 4. Tit. 7. § 11.; Dict. *voce* COLLEGE OF JUSTICE.

2*do*, Professors' salaries being alimentary, and given to enable them to maintain a suitable station in life, are not arrestable.

Answered: 1*st*, The privilege of members of the College of Justice is not effectual, unless pleaded in the inferior court.

2*do*, If Mr. Wylde had been pursuer of a *cessio bonorum*, he would have been obliged to give up a reasonable proportion of his income to his creditors, and, having a pension from the Crown, he would not have been allowed likewise to retain his salary. The present case must be decided on the same principle. There is nothing in the nature of a Professor's salary which excludes arrestment, though, where he has no other income, he may plead *beneficium competentiæ*, 5th March 1768, Grierson, No. 102. p. 11784. 19th May 1791, Mackenzie, No. 90. p. 10413. 23d February 1773, Holiday against Macphail, No. 58. p. 729. Spottiswood, *voce* PENSION, Act. Sed. 11th June 1613.

The Court being unanimously of opinion, that the respondent was right on both grounds, adhered to the Lord Ordinary's interlocutor, and (26th June) refused a petition without answers.

Lord Ordinary, *Hermand.* Act. *Maxwell Morison.* Alt. *Fraser Tytler.*
Clerk, *Menzies.*

D. D. *Fac. Coll. No.* 135. *p.* 531.