

No 58.

*Answered,* The general rule in law is, that every man's effects, of whatever kind, are subject to pay his debts. The only exemption of funds not specially declared, and bearing, *in gremio* of the right, to be alimentary, is that mentioned in the act of federunt 1613, recited by Spotswood, *voce* Pension, and what is contained in the act of federunt, February 27. 1662, reciting one in 1626.

In the present case, there is no declaration whatever that the perquisites of this office, which does not yield less, *communibus annis*, than L. 50 Sterling, shall be held alimentary; far less, that the shop-rents, amounting to but L. 9 out of L. 50, shall be deemed such. And, in their own nature, it is impossible they can be viewed as alimentary, from this simple consideration, that they are not paid *per* advance. The state of this process demonstrates, that they are not absolutely necessary for the defender's support; and, as the other perquisites are more than sufficient to maintain him, compared with what ought to be held alimentary in a question with a creditor, there is not the smallest ground for finding, that the rents in question are not attached by the pursuer's arrestments.

It may be proper that the Court should have an officer of this kind; but it is of much more consequence to show, that no office whatever can be a shelter to injustice. If Mr M'Kaile should not be in capacity to attend, the office will still subsist, though the Court may have another incumbent. His being an officer of Court, therefore, can make no alteration in the present question.

It was indeed found, that the fees paid by a borough to a commissioner in Parliament were not arrestable; but that proceeded chiefly on this consideration, that the commissioner was entitled to the privileges of Parliament; and the fees being paid only during his attendance in Parliament, he was to be held as attending in consideration of them; and, therefore, could not be deprived of them.

In fine, the pursuer knows of no privilege indulged in this respect to any officer whatever. The Court have solemnly decided in the case of an officer in the army, that the arrears, which are in effect part of the pay, are arrestable, January 26. 1715. Brodie *contra* Campbell, No 45. p. 709.; and in the case of Hale, minister of Linton, *contra* his Creditors, February 12. 1736, found a minister's stipend arrestable, No 47. p. 711.

THE LORDS repelled the objections to the arrestments.

Act. Alex. Murray.

Alt. Geo. Ferguson.

Clerk, Tait.

Wallace, No 61. p. 150.

No 59.  
Arrestment,  
not a habile  
mode of af-  
fecting the  
reversion of  
an estate sold  
judicially.

1779. November 30.

HUMPHRY-BLAND GARDINER *against* GEORGE SPALDING.

MR GARDINER was a personal creditor of Spalding of Ashintilly, whose estate was sold by judicial sale; and it being, after payment of the heritable debts, suf-

ficient to yield a reversion, Mr Gardiner used arrestment in the hands of the purchaser. To this arrestment it was *objected*, That the only competent mode of affecting the reversion of the price was by adjudication ; and

THE LORDS found, ' That an arrestment is not a habile way of attaching or affecting the reversion of a bankrupt estate, sold under the authority of this Court, in the hands of the purchasers thereof.'

Lord Ordinary, *Westhall*. Aēt. *G. Fergusson*. Alt. *Nairn*.  
Stewart. *Fol. Dic. v. 3. p. 40. Fac. Col. No 92. p. 177.*

No 59.

1794. December 5. ROBERT WATSON *against* ALEXANDER MACDONALD.

WILLIAM MACDONALD assigned a lease of an heritable subject to James Macdonald, in security of certain personal debts. The subject was in possession of sub-tenants, from whom the assignee drew the rents. The assignation was intimated to the landlord.

Robert Watson, creditor of James, executed an arrestment in the hands of William Macdonald, and afterwards raised a process of furthcoming against him, in which appearance was made for Alexander Macdonell, trustee on the estate of James, which had been sequestrated after the date of the arrestment.

William Macdonald likewise raised a multiplepoinding.

Alexander Macdonell

*Pleaded* : The debts were made real, by the assignation, and consequently became the subject of adjudication, not of arrestment. The possession on the lease being equivalent to investiture, it prevented the application of the exception contained in the act 1661, c. 51. which declares, that money due ' by bonds, contracts, or other personal obligations, whereupon no investitures have followed,' may be attached by arrestment.

The arrester

*Answered* : It was the object of the act 1661, to make all debts, liable to arrestments, which are not secured by a complete feudal investiture ; 20th February 1706, Stewart against the Creditors of Dundas, No 42. p. 705 ; Fount. 18th January 1695, Frazer against Cleghorn, No 19. p. 689. Now, leases, although by statute, declared good against singular successors, are in other respects mere personal rights.

THE LORD ORDINARY ' preferred Robert Watson, the pursuer of the furthcoming, to the sums in the hands of the raiser of the multiplepoinding.'

Upon advising a reclaiming petition, with answers, it was

*Observed*, in support of the interlocutor, That an assignation in security of a moveable debt, does not make it heritable, as to diligence : In *opposition* to it ; That the arrestment was inept, because the debt was secured by an assignation to a lease clothed with possession, which is a *real* right, complete *sua natura* ; which

No 6c.

A debt secured by an assignation to a lease of an heritable subject, followed with possession, cannot be carried by arrestment.