

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.