

1773. February 23.

SIMON HOLIDAY *against* HUGH M'KAILE, Writer in Edinburgh, and one of the Principal Keepers of the Parliament-House.

HOLIDAY, creditor to M'Kaile in the sum of L. 300 Sterling, by bill accepted along with his son, laid arrestments in the hands of the possessors of some booths, or shops, in the outer parliament-house, and insisted in a furthcoming.

Pleaded by M'Kaile, Salaries of offices and fees of servants are not affectable by arrestment, except in so far as they exceed the bounds of a reasonable aliment, to be estimated by the nature of the office in the one case, and the condition of the service in the other.

The right the defender has to these rents arises from his office of one of the keepers of the parliament-house, the emoluments of which are inconsiderable; the fixed salary, by the stated particulars thereof, amounting to little more than L. 20 Sterling yearly to each of the joint keepers, which is made up in part by rents of the booths, or shops, in the outer parliament-house, the half whereof comes to L. 9 Sterling: Besides which fixed income, there are several small fees annexed to the office.

It will not be said that twenty pounds Sterling yearly exceeds the bounds of a reasonable aliment for a man who bears a considerable office about the Court. It is clear, therefore, that the emoluments of this office, without distinction, whether they arise from the rents of shops, or from any of the other articles stated, are strictly alimentary, leaving no surplus, such as can be attached by the diligence of creditors.

Farther, it cannot be denied that this aliment is lawfully constituted. The defender was admitted to his office by the Court, upon a leet presented by the Magistrates of Edinburgh; and his admission is inserted in the books of federunt. In every particular, therefore, do the rents in question fall under the description given by lawyers of an alimentary fund that may not be arrested.

In the beginning of this century, a question occurred, whether the fees of a commissioner in Parliament could be arrested? It was *argued* for the creditors, that, although pensions granted by the King, the salaries of his Ministers of State, and servants, could not be arrested, yet that was only in consequence of the act of federunt, June 11. 1613; and that the fees of Commissioners in Parliament are not mentioned in the act; nevertheless, the LORDS found the arrestments unwarrantable, and ordained them to be loosed, without caution or consignation; Forbes,* March 18. 1707, Molison supplicant. In the present instance, if the pursuer is at liberty to arrest the rents of the shops, which are one half of the salary, he must be at equal liberty to arrest the whole from year to year. If he be allowed to arrest one half of the salary, the defender will not be in a condition to attend the service of the Court in a suitable manner; if he arrests the whole, he cannot attend it all.

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No 58.

The rents of booths, or shops, in the outer parliament-house, part of the dues of one of the principal keepers of the parliament-house, found to be arrestable.

* Page 155. *vide* PERSONAL and TRANSMISSIBLE.

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-