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it is allowed by the civil law ; but have been competing with him on their several interests in a subject, and have been found preferable ; and for the same reasons are preferable to Margaret. And, with regard to his claim of aliment, there remains only free to them 1000l. Sterling, in lieu of the provisions contracted ; which is a small enough aliment for four young Ladies.

Replied : This benefit was allowed to a father, 21st February 1745, Bontein against Bontein, (*supra*).

Observed, That the *beneficium competentie* was more extensive than a claim of aliment ; for, in an action of aliment, it was considered what the defender could spare : But, upon the exception of competency, the consideration was what the defender, in that case, could pay, reserving a competency. And here Mr Hogg's grandchildren were demanding from him, as their claim was a reduction of his reserved liferent : That with regard to Margaret's interest, the reduction was upon Fraud ; and it would have been equally fraudulent in him not to have reserved power to grant her an aliment.

THE LORDS, 25th July, ' found the defender entitled in this case to the *beneficium competentie*, to the extent of a necessary aliment, which they modified to the sum of 30l. Sterling for himself, and during his life ; and 100l. Scots money for his daughter Margaret, payable to the defender during her and his joint lives ; and to herself after his decease, during her life.' And this day, on bill and answers, adhered.

This was reversed on an appeal ; but without prejudice of any remedy that might be competent to Margaret for her annuity on the death of her father, which was reserved.

1750. July 13.

It being reserved to Margaret Hog, by the decision of the House of Peers, reversing that mentioned 30th November 1749, to insist on any right she had to the annuity of L. 100 a-year, granted her by her father, in virtue of the reserved powers in his son's contract of marriage, payable after his death, and she insisting therefor,

THE LORDS found she was not intitled thereto in competition with the pursuers.

D. Falconer, v. 2. p. 118. 173.

1778. July 11. PATRICK REID against MATHEW DONALDSON.

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A person
who had ob-
tained a
Cessio, was
sued by a creditor

PATRICK REID obtained decret of *cessio bonorum* against his creditors. Afterwards, Donaldson, one of the creditors called in the *cessio*, pursued Reid for payment of his debt, obtained decret in absence, and was proceeding to do diligence against his effects.—In a suspension,

Pleaded for Reid: The decret of *cessio* protects the suspender not only from personal diligence, but likewise from diligence against his effects afterwards acquired; except in so far as the charger is able to instruct, that the suspender has effects over and above a competency for the subsistence of him and his family. This is agreeable to the doctrine of the Roman law, from which we borrow the action of *cessio*, and the *beneficium competentiæ* given by that law to the obtainer of the *cessio*, ff. l. 42. 3. 6. is likewise adopted into ours, *Quon Attach. c. 7.*; Bankton, v. 3. p. 18. § 1.; p. 19. § 5.; Erskine, p. 696. § 27. The charger, therefore, can attach no effects belonging to the suspender, without first condescending on such effects, that it may be known whether a competency would remain.

On the part of the charger: No objection was made in this case to suspending, as to diligence against the person of the bankrupt; but, it was insisted, that the decret of *cessio* does not protect effects of the bankrupt, afterwards acquired, from the diligence of his creditors. Our law does not indulge the bankrupt with a reservation of effects sufficient for an aliment. The opinions of Lord Bankton and Mr Erskine, adduced by the suspender, seem to be founded solely on a passage in the *Quon Attach. c. 7.* which supposes that every debtor, both before and after a *cessio*, is entitled to this privilege. That passage, therefore, can merit no regard as an authority. The law is fixed by the usage. No instance ever occurred, in which this reservation was allowed, either at obtaining the *cessio*, or out of effects afterwards acquired. The charger, therefore, is not bound to condescend, as the suspender is not entitled to have any thing reserved. Such a condescendence might likewise be the means of disappointing the diligence altogether.

The Court were of opinion, That the charger must be allowed to proceed in his diligence to attach the effects, without condescending; and that the debtor had no right to have any part of his effects set aside to him for his maintenance; but in case the charger, in the execution of the diligence, should proceed to any act of rigour, such as attaching the tools by which the suspender, as an artificer, gains his daily bread, the Court would then judge on the circumstances of the case, whether the diligence ought to be supported.

The Court suspended the letters *quoad* personal diligence against the suspender; but, in other respects, found the letters orderly produced.

Fol. Dic. v. 3. p. 73. Fac. Col. No 31. p. 52.

1788. August 5.

ROBERT PRINGLE against ALEXANDER NEILSON.

ROBERT PRINGLE, formerly a retail dealer in the town of Dalkeith, after having obtained a *Cessio bonorum*, was employed as a merchant's clerk; in which capacity he had a salary of L. 25 per annum. Having furnished a small house for

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ditor who had been called. The bankrupt urged, that the decree of *Cessio* protected not only from personal diligence, but from diligence against effects acquired after the decree, except in so far as exceeding a competency. The Court suspended only as to personal diligence. But they expressed an opinion, that the tools by which the bankrupt earned his subsistence, could not be affected.

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A person who had obtained a *Cessio*, was afterwards employed as