

No 75.

That the fisk had a real privilege on the lands and estates of their collectors, preferable to their other creditors; *2do*, That this was not so personal, but it transmitted to their assignees. As to the *first*, The civil law was full on it, preferring *causam fisci et privilegium primipilare*, both as being a public concern, and to have the government and army effectually supported; and our law has made not only the Commissioners of Supply, and the collectors, liable for the public cess imposed by acts of Convention or Parliament; but even it becomes a *debitum fundi* on every heritor's land; and so by the acts in 1673 and 1681, and subsequent acts of supply, it affects singular successors, and is liable to quartering and all other diligence, and so is preferable to any other private debts. And as to the *2d*, Where cess is paid by the collector's cautioner, and is assigned, he has the same access and relief that the public had. See 28th July 1665, Rae, *voce* PUBLIC BURDEN; 10th June 1631, Peebles, *voce* PRIVILEGED DEBT; *ult.* January 1665, Anderson, No 39. p. 6235; and lately, Houston, the King's collector, against Creditors of Montgomery, see PRIVILEGED DEBT. *Answered*, This privilege is only *quoad* the manner of execution, but not as to co-creditors. Other civil debts have the executorial of horning, poinding, and arrestment for affecting the debtor's means; but for better ingathering of the public revenues, law has superadded the summary diligence of quartering and military execution to distress their lands or moveables; so that the soldiers may quarter ay till they pay; but if the public be once satisfied, this personal privilege ceases, and nowise transmits to their assignees, no more than the King's privileges can be claimed by donatars to escheats or forfeitures. THE LORDS superseded to determine what preference the cess had beyond other debts; but thought, whatever the privileges were, the assignee had them in the same manner that the cedent and the public, his author, had before their denuding.

*Fol. Dic. v. 2. p. 78. Fountainhall, v. 2. p. 282.*

No 76.

The fees of a Commissioner to Parliament not arrestable as being alimentary.

1707. March 18. FRANCIS MOLISON, Merchant in Brechin, Supplicant.

FRANCIS MOLISON having represented to the Lords, by a bill, that Alexander Young, William Clark, and John Spence, Merchants in Brechin, had unwarrantably arrested, for some pretended debts, his commissioner-fees for the Town of Brechin; in so far as, seeing the person of any representative in Parliament cannot be attacked for debts during the sitting thereof, neither can the fees destined for defraying the commissioner's charges be affected by arrestment or diligence; these fees being in effect aliment, like fees given by the Queen to her servants, which are not arrestable.

*Answered* for the arresters; That they know no positive law excoeming commissioners to the Parliament from personal execution; albeit by custom where Members of Parliament have been imprisoned upon legal diligence, the Parliament has sometimes given order for their liberation; and, unless the Parliament

require their imprisoned Members, to be set at liberty, they may be detained in custody; nor is there any law or custom privileging commissioner's fees against the diligence of creditors; these not being contained in the act of sederunt 1613, which exeems only pensions granted by the King, and the salaries of his Ministers of State and seryants, and casus omissus habetur pro omisso.

THE LORDS found the arrestments unwarrantable, and ordained them to be loosed without caution or consignment.

*Fol. Dic. v. 2. p. 77. Forbes, p. 155.*

No 76.

1707. July 23.

SIR ALEXANDER WEDDERBURN of Blackness, *against* JAMES MANN late Bailie in Dundee.

JAMES MANN, son and apparent heir to Mann, who stood infest in some acres of land lying near the Ports of Dundee, having, in the year 1704, disponed these acres to Sir Alexander Wedderburn, with an assignation to that current year's rent; and Bailie Mann, as a creditor of the tenant's having poinded that whole crop out of his barn-yard, before the master's rent was satisfied; the LORDS found that Sir Alexander Wedderburn had *jus hypothecæ* for the year's rent, as his cedent the apparent heir would have had.

*Fol. Dic. v. 2. p. 78. Forbes, p. 189.*

No 77.

1709. January 27.

DICK and DUNBAR *against* PINKHILL.

A LADY having a liferent provision from her first husband, the same was challenged in a reduction by the first husband's creditors during her second marriage; which produced an agreement in this manner, That the Lady should be restricted to 800 merks, by way of a yearly alimentary annuity, excluding her husband's *jus mariti*, and that her discharge should be sufficient without her husband. The provision thus settled was found to be alimentary, and not to be attachable for her third husband's debts.

*Fol. Dic. v. 2. p. 77. Fountainhall.*

No 78.

\*\*\* This case is No 205. p. 5999, *voce* HUSBAND and WIFE.