CASES

DECIDED IN THE HOUSE OF LORDS

ON APPEAL FROM THE

COURTS OF SCOTLAND,

1826.

The Earl and Countess of STRATHMORE, Appellants.— *W. Brougham.* WILLIAM LAING, Respondent. — No. 1.

Royal Palace—Poinding.—Held ex parte (reversing the judgment of the Court of Session), That the privilege of Royal Palace protects against poinding and letters of open doors within the precincts of the Palace of Holyrood-house, although his Majesty be not residing there when the diligence is attempted to be executed,—the Palace being kept up as a place of royal residence.

Feb. 22, 1826.

1st DIVISION. Lord Alloway.

THE Abbey of Holyrood-house was founded by King David the First in the year 1128, and among other privileges he endowed it with that of a Sanctuary. The Charter bears, 'Et prohibeo 'ne aliquis capiat pandum super terram sanctæ crucis, nisi ab- 'bas ejusdem loci rectum et jus facere recusaverit.' In 1528, James the Fifth erected at the south-west corner of the Abbey a royal palace; and on the suppression of religious houses in 1587, the whole domain, with the privileges thereto attached, was vested absolutely in the Crown. The Palace continued to be the principal residence of the Monarch till the accession to the throne of England, and was thereafter occasionally resorted to. It was, however, always kept up as a royal residence—was made the depot of a guard of honour—was given as a royal place of abode to the Princes of the House of Bourbon—and was more recently occupied, under a royal license, by the Archdukes of Austria and Prince Leopold. In 1822, King George IV. occupied the Palace, convened his Privy Council, and held his Courts there with all the appropriate indications and insignia of royalty.

Feb. 22, 1826. In 1815, the Countess of Strathmore, who was then Lady Campbell of Ardkinglass, obtained from his late Majesty a royal warrant to occupy and possess certain apartments in the Palace, which was there designated, 'our Palace of Holyrood.' She accordingly, in virtue of this warrant, took possession of certain apartments in the Palace, the furniture of which belonged to his Majesty, with the exception of some valuable pictures which were the property of her Ladyship and of the Earl of Strathmore, whom she had married while residing there.

In 1820, William Laing, bookseller in Edinburgh, describing himself as a creditor of the Earl and Countess of Strathmore, gave them a charge of horning for payment of his debt, and on expiry of the charge, attempted to force an entry into the Palace for the purpose of executing a poinding of the pictures, which were in the royal apartments. There being reason to suspect the validity of these proceedings, from the debtors being furth of the kingdom, and the charge having been on induciæ of only six days, a second charge on sixty days was given. On its expiry, the messenger attempted to effect a forcible entrance to execute the poinding, and being denied admittance, he returned an execution of lock-fast doors. Laing then applied for and obtained letters of open doors; and he procured the concurrence of the Baron Bailie to the poinding 'over effects situated 'within the Sanctuary of Holyrood-house.' A bill of suspension and interdict having been presented by the Earl and Countess of Strathmore, and also a separate bill by the Officers of State, it was contended by the former, that a poinding within the Sanctuary was unlawful, and by them and the Officers of State, that at all events it was incompetent within the Royal Palace. Lord Meadowbank refused the bill for the Earl and Countess; and Lord Gillies refused that by the Officers of State. Both of these parties having reclaimed to the Second Division,

Lord Robertson observed,—The first question is, how far it is lawful to poind within the Sanctuary? There is no doubt a privilege attached to it of protecting the person when the debtor is booked—but there is no such question here. The point is, whether it be lawful to execute diligence against the goods of the debtor which are situated there? I cannot discover any authority for protecting them; and so far I am clearly of opinion that the diligence is lawful. On the second question, whether it is competent to execute a poinding within the Royal Palace, there is more difficulty. In every country the place of the King's own residence stands in a different situation from his other domains. It possesses a peculiar jurisdiction, which is vested in

a special officer, and is exclusive of that of all others. This is bestowed to prevent broils and disturbances, and out of respect to the Sovereign. But this privilege is limited to the place of his actual residence—It rests on the respect due to the person of the Sovereign, and does not belong to every house where he may at one time have resided. Feb. 22, 1826.

Lord Glenlee.—I am of the same opinion. At one time it was not lawful, either by the authority of this or of any other Court, to enter the Palace of the King to execute diligence. But at that time there were officers appointed by his Majesty, under whose sanction diligence might have been executed. According to the genius of our law, there is an extreme tenderness for the person of a debtor, but a great anxiety to prevent his funds being removed from the reach of his creditors. In attempting, however, to execute diligence against effects within the royal precincts, the consent of his officer must be obtained. This has been got, and so far, therefore, as regards the bill of suspension by the Earl and Countess of Strathmore, I think it unfounded, and the one by the Officers of State unnecessary, as the goods of the King cannot be attached for the debt of these parties.

Lord Bannatyne.—We all know that the Sanctuary affords a protection to the person of a debtor, but to this the privilege is limited. If this were to be held a Royal Palace, I would doubt the competency of the poinding; but in the circumstances I do not think we can regard it as such.

Lord Craigie.—I conceive that there is no difficulty in the case. The proceeding is sanctioned by the King's officer, which I apprehend is sufficient.

Lord Justice Clerk.—There are two questions entirely separate—the first regarding the privilege of the Sanctuary—and the other that of the Palace. I agree that the Sanctuary affords no protection against the diligence of the law in relation to goods; but I have much doubt as to the competency of a poinding within the Palace. It happens to be situated within the Sanctuary, and this leads to some confusion; but let it be supposed that it were in the Castle, or at Linlithgow, the question will then be purely presented. Now, there are here almost all the usual appendages of a Royal Palace:—The domestic establishment is appointed and paid by his Majesty;—there are also royal apartments, where the King's guests have been occasionally accommodated; and there is a guard of honour. It therefore stands very much in the situation of the Palace at Kensington, where it has been held that diligence is unlawful. The question then is, Can effects situated within this Palace be exposed to diligence, and more especially,

Feb. 22, 1826. can the doors of the Palace be forced open by letters to that effect? Looking at our authorities, and at the general principles of our law, I think that diligence cannot proceed against the property of the King situated there; and if not, can you attach the effects of his subjects situated there? On this I have not formed a decided opinion, but the case of the Palace of Kensington comes extremely near to this one; and, therefore, while I throw out these observations as doubts, I think that we ought to pass the bill to try the question.

The other Judges having acquiesced in this proposal, the bills were passed simpliciter.

The letters of suspension by the Earl and Countess having been debated before Lord Alloway, his Lordship, on the 7th December 1821, found, 'that there is no precedent for the Sanc-'tuary of Holyrood-house, or for the Palace, affording any pro-'tection to the effects of debtors residing therein, so as to relieve 'them from poinding;—that the suspenders' reasoning could 'apply only to the Sovereign's residence in the Palace, whose 'presence ought not to be disturbed by the intrusion of persons 'into the Palace without his permission, or that of the keeper 'appointed by him;—that the diligence in question was autho-'rized of the Baron Bailie of the Abbey, the officer appointed by 'the hereditary keeper of the Palace;' and therefore repelled the reasons of suspension, and found the letters orderly proceeded. To this judgment the Court, on petition and answers, adhered on the 18th February 1823, and found the Earl and Countess and their mandatory, jointly and severally, liable in expenses.*

Lord Hermand observed,—The answers by Laing are quite satisfactory. It is the execution of caption, and not the attachment of moveables within the Palace, which creates a violation of the privileges of the Palace. In England they merely extend to the protection of the person.

Lord President.—I am of the same opinion; and the reason why a caption is not allowed to be executed is, that it is to be presumed that every one within the palace is engaged in the service of the King.

Lord Gillies.—I refused the bill of suspension, and I adhere to my original opinion.

Lord Succoth.—My only doubt arises from the practice in England; but in the case of the Palace of Kensington, one of the members of the royal family was residing there.

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* See Shaw and Dunlop's Cases, Vol. I. No. 169, and Vol. II. No. 200.

Lord Balgray.—I concur; and the only doubt I had was, whether the concurrence of the Bailie had been correctly got. Feb. 22, 1826.

The Earl and Countess appealed against these judgments; but William Laing, the respondent, making no appearance at the bar of the House of Lords, the case was heard ex parte.

Appellants.—The King's person is inviolable; nor can his presence be disturbed, whether he be actually or virtually present, by the executing of legal diligence against any of his lieges or their property. This protection is given to a subject, when within the precincts of a royal palace, not as an indulgence, but because an indignity would be offered to Majesty. It is one of the privileges arising out of the King's prerogative, and holds equally in Scotland as in England. It extends not only to the King's dignified officers, but to the servants of the Palace. It protects the representatives of Majesty,—ambassadors, judges, courts of justice, &c. There is no necessity for a precedent. The King's prerogative needs no statute, or dictum, or judgment of a court. That there is no precedent of poinding or executing letters of open doors within the Palace being declared irregular, is a powerful fact in favour of the appellants. We never could have arrived at the present time without such a breach of decency being attempted, if even the most distant doubt had been entertained on the point. Practice is decidedly against the respondent. It is admitted that within the Abbey of Holyrood-house and its privileged domains, a caption cannot be executed; but it is alleged a poinding and letters of open doors may. The privileges of the Abbey, however, as a sanctuary, and the privileges of the Palace, are quite different. Poinding may or may not be competent within the Abbey, but that cannot affect the royal prerogative attaching to a palace. The Baron Bailie only concurred to a poinding of the effects within the *Sanctuary*. But it is of no consequence to the legal argument whether he concurred or not. It was contended, however, in the Court below, that Holyrood-house was not entitled to the privilege arising from the royal prerogative;—that it is a different case where a palace is the actual royal abode, and where it is not. But once a palace, always a palace;—and Holyrood-house has been so used and occupied from time to time, as to the reigning monarchs seemed meet. The King has many palaces, but he cannot personally occupy them all at once. It is impossible to say how soon it may please a monarch to change his residence. As far as the royal prerogative is concerned, Holyrood-house is as much a palace as it was in the days of the Stuarts.

Feb. 22, 1826. *Lord Gifford.*—It is admitted that within Holyrood-house the person of a debtor is protected?

W. Brougham.—We are afraid that protection is in that case put upon the plea of sanctuary—the Abbey privilege.

Lord Gifford.—It is, in the pleadings, put on the Palace.

The House of Lords ordered and adjudged that the Interlocutor complained of be reversed.

LORD GIFFORD.—My Lords, the question here is, whether the diligence of poinding, accompanied by letters of open doors, which is an authority to enter forcibly the house and apartments, against the goods and effects of a person residing in the Palace of Holyrood-house, can be there legally executed. It is a matter of regret that I have not had the advantage of knowing on what precise grounds the Court below proceeded in giving the judgment appealed from; nor have I had the assistance of the arguments which might have been used by the respondent. This last circumstance made me feel it a duty to look at the case with more attention and minuteness, than would otherwise have been required. There is not much to be found in the law of Scotland as to the privilege in question.—(His Lordship here described the locality of the Abbey and Palace.)—Your Lordships thus see that there remains in Scotland the privilege which formerly belonged to abbeys. It so happened, that within the precincts of this sanctuary, and attached to the Abbey, a Royal Palace was built, which became the residence of the monarchs of Scotland. It is admitted that this Palace still retains the semblance of a royal residence—that it has a guard of honour—officers heritable and otherwise—that it was so described in the royal warrant granted to Lady Strathmore to occupy the apartments assigned to her;—and when his Majesty lately went to Scotland, he held his Court there. It is not disputed that this privilege, which I believe exists in all civilized countries, would protect against the diligence complained of, if the King actually resided there.—See Ersk. Institutes (4. 3. 25.), where the author talks of Holyrood-house as a royal palace.—This privilege is given, not merely because otherwise the King might be deprived of the services of his domestics, but that it is not seemly that the royal palace, or the royal presence, should be exposed to be made a scene of disturbance or confusion. As to actual residence, that point came before the Court of King's Bench, in a question relative to Kensington Palace. The same objection as here was there made. But the Court held that actual residence was not necessary. In the present case, the Lord Ordinary seems to have thought, that because there was no precedent, therefore that was a reason why the privilege should not attach to stay this diligence. I do not see that the privilege requires a precedent to support it. It is admitted that there is no instance in which a poinding within the royal apartments has been attempted, and the very absence of such instance is rather favourable than against the privilege. But the question is, whether Holyrood-house

is not to be considered as a Royal Palace? and if so, whether this privilege, which attaches not to the person or goods, but to the place, should or does afford a protection against the diligence complained of, although the King may not have resided there for a great many years? Now looking to the existing state of the Palace, the ceremonial still kept up there, the royal permission to reside, and the other circumstances all tending to show that it is to this hour viewed as a palace of the King—and considering that this privilege in Scotland is the same as the privilege recognized and sanctioned here, I cannot agree that the privilege does not attach and save the effects in the royal residence from being carried off by poinding. The diligence granted here was actually to force the apartments. As to the permission given by the Baron Bailie of the Abbey, it was a permission to poind, not to use letters of open doors; and it applied to the Sanctuary, and did not bear to extend to the Palace. But here the privilege claimed is not what attaches to the Sanctuary, but to the Palace; and the circumstance of the Palace being placed within the precincts of the Sanctuary cannot affect or impair the privilege of the Palace. In absence, therefore, of all authority to show that this diligence had ever been attempted before—it being unquestionable that Holyroodhouse has not been abandoned as a Royal Palace by his Majesty, and that actual presence of the King is not necessary to preserve the existence of the privilege—however much I may deplore that my opinion does not coincide with that of the Court below, I cannot move your Lordships to affirm the judgment brought before us. I may add, that, although the question was not decided on its merits, I perceive that the Second Division, on advising the Bill of Suspension presented by the Officers of State, entertained sentiments different from what have led to the judgment. Feb. 22, 1826.

Appellants' Authorities.—Maitland's History, p. 144; Ross's Lectures, v. 1, p. 333—144; 3 Coke, 45, p. 140; 2 Raymond's Reports, 978; 4 Campbell, p. 45; and 10 East's Reports, p. 578; Chitty on Perogative, c. 14.

J. RICHARDSON, Solicitor.

DR BALMANNO, Appellant.—*Keay—Jno. Campbell.* No. 2.
DUNCAN M'NEE, Respondent.—*Adam—Abercrombie.*

Prisoner—Indefinite Payment—Bankrupt.—A creditor having drawn a dividend from the sequestrated estate of his debtor upon the sum total of a debt payable by four instalments, of which the two last were not yet due,—Held (reversing the judgment of the Court of Session) that the dividend was not imputable towards the total extinction of the first and second instalments, but was to be considered as a payment of so much on each pound of the whole debt.

DR BALMANNO, who was proprietor of a druggist-shop in Glasgow, sold the whole concern in 1820, with its debts, utensils, and stock, to Duncan M'Nee, for £1800. M'Nee, along with two co-obligants, John M'Nee and John Wilson, gave a Feb. 24, 1826.

1st DIVISION. Lord Meadowbank.