

No 390. power in that matter, but to call a meeting of the heritors; and, in default of such meeting, to apply to the Commissioners of Supply, to modify a salary, not under 100, nor above 200 merks, and to assess the lands in the parish proportionally. Indeed, the act gives no power whatever to the Presbytery, in a case like the present, where a schoolmaster is already settled, with a salary considerably above the *maximum*.

“ THE LORDS found, that the Presbytery has no jurisdiction in this matter; and, therefore, advocated the cause, and assolzied.”

Reporter, *Pitfour*.

Act. *Macqueen*.

Alt. *Solicitor Dundas*.

G. F.

Fac. Coll. No. 74. p. 318.

DIVISION XIX.

What Courts competent for Registration, in order to do Diligence.

1692. November 8. SHAW against KENNEDY.

No 391.

A BOND, registered in a jurisdiction where the debtor dwells not, is a null decree, as pronounced *a non suo iudice*.

Fol. Dic. v. 1. p. 510. Fountainhall.

* * * This case is No 72. p. 2146. *voce* CAUTIONER.

1703. February 3.

No 392.

SIR GEORGE WEIR of Blackwood against WILLIAM COCHRAN of Kilmarnock, and Others.

It was objected against some arrestments, that the bonds on which they proceeded, though for considerable sums were registered in the Commissary-court books, on which registration no di-

IN the competition betwixt Sir George Weir of Blackwood, William Cochran of Kilmarnock, and other Creditors of John Corse, merchant in Glasgow, it was objected by Blackwood, that though his arrestment was posterior in date to the other creditors, yet it was preferable in law, because he had registered his bond in the books of Session, and taken out letters of arrestment thereon; whereas Kilmarnock's bond was only registered in the Commissary-court books of Glasgow; and on their precept the arrestment is laid on, which is null, being *forum incompetens* for so great a sum as 3000 merks, *et ultra vires*

of their cognisance and jurisdiction, who, by their instructions, are tied up to L. 40, as has been oft decided, 23th November 1621, Lord Lindsay *contra* Ayton, No 286. p. 7575.; 6th February 1624, Gordon *contra* M'Heugh, No 284. p. 7573., observed both by Haddington and Dury; and 19th July 1625 Ker *contra* Ker, (See APPENDIX), where the Commissaries' decreets were annulled when they exceeded the foresaid boundaries; and lately, on the 1st of July 1696, Paterson against Ross and Urquhart, No 292. p. 7579., the LORDS annulled decreets of adjudication, because they proceeded on decreets of constitution obtained before the Commissary of Ross for considerable sums, to which he was not judge competent, and his jurisdiction was not prorogated by the parties. *Answered* for Kilmarnock and the other creditors-arresters, That all of them dwelt within the Commissary of Glasgow's jurisdiction, both the debtors and the arresters, and the persons in whose hands the arrestments were laid; and to quarrel such diligences, may lay a preparative to subvert most of the diligences in the nation, seeing the instructions are plainly in desuetude, and the Commissaries judge promiscuously in any sums brought before them; likeas, their jurisdiction is sufficiently homologated and prorogated by the clause of registration, which bears any judges' books competent; and it is the advantage of the lieges to have their election whom to go to, by which they are served both cheaper and readier; and as to the decision, Paterson against Ross, it was in a competition of real and heritable rights to which Commissaries are not judges; but this is in the case of arresters, where the diligence is personal, and the subject moveable. THE LORDS thought the clause of registration gave neither warrant nor consent, unless it had *per expressum* bore the Commissaries' books; but in respect of the general custom, and the danger of many rights, they, by a scrimp plurality, sustained the arrestment laid on by the Commissary's precept, though it was beyond the bounds of that capacity to which he is restricted by the old laws. Yet this cannot hold in all cases; for what if he had registered his bond in the Admiral's books, and taken out his precept of arrestment, it would have been certainly null; for *jus dicenti extra territorium impune non paretur*; but the general custom of the Commissaries judging in such matters over-ruled this case.

On a bill given in for Sir George, the LORDS rescinded this interlocutor, and found the diligence on the Commissary's precept for arresting null.

Fol. Dic. v. 1. p. 510. Fountainball, v. 2. p. 178.

1705. June 23.

JOHN MATTHIE, Skipper in Prestonpans, *against* The COMMISSARY-CLERK of Edinburgh.

THE said John Matthie having caused register a bond due to him in the Commissary-books of Edinburgh, and having afterwards occasion to raise an

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diligence could proceed. The Lords, tho' it was customary to register bonds in the Commissary-court books, found the arrestment null.

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