

tion was, In whose hands this debt could be properly arrested by a creditor of Hardie's; whether in the hands of Colin Mackenzie, or of the bank?

N.B. The arrestment was before the bank had operated payment from Mackenzie. This case was a little debated, but it was not found necessary to determine it; however, the most of the Lords seemed to be of opinion that the arrestment in the hands of the bank was not sufficient, nor were they moved with the similitude of this case to the case of *Ludovic Gordon*, decided *Feb. 14, 1740*.

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1742. *June 28.* CAPTAIN LUMSDEN *against* ———.

[Elch., No. 4, *Apprentice*, and No. 1, *Soldier*; C. Home, No. 200.]

THE Captain having enlisted an apprentice, the Justices of the Peace, upon application of the master, discharged him. The Captain brought a suspension before the Lords, wherein he alleged, *1mo*, That the Justices of Peace were no competent judges; for though a Justice of Peace may refuse to attest a man, yet after he is attested he cannot liberate him. *2do*, That, supposing the Justices were competent judges, yet they could not be so in this case, because they were not the justices of the county where the man lived, or was enlisted. *3tio*, An apprentice may be enlisted; *1mo*, Because there is no positive law against it; and, by the common principles of law, the service of the king and country is preferable to any other, and an engagement in that service annuls any prior engagement. *2do*, It is expressly provided by a clause in the mutiny-act, that any person legally enlisted shall not be attached or detained from the service for any other cause than an action, or suit of law, to the avail of ten pounds; now in this case the indenture bore no penalty. *3tio*, It is the practice in England.

The Lords took up this cause upon the last point, and found that an apprentice cannot be enlisted; because, during his apprenticeship, he is no more *sui juris* than a salter or collier. As to the clause of the statute, it supposes the person legally enlisted; which, in this case, is denied. And as to the practice of England, whatever it may now be, it does not appear always to have been law there, that apprentices could be enlisted; for, in Lord Clarendon's history, we see a manifesto set forth by the Parliament, wherein they declare it lawful to enlist apprentices, "considering the extraordinary danger the state was in;" and at the same time indemnify the cautioners: *et exceptio firmat regulam in casu non excepto*.

By Act 14, Sess. 2, Par. 2, Chas. I., *anno 1645*, neither the servants, apprentices, nor regular workmen of manufacturers, could be enlisted.