

law, and the other ports and harbours belonging to the town of Glasgow ; but it never could be pleaded upon as a discharge of or exemption from these new duties recently laid on by Parliament, long after the contract, and for reasons and purposes which did not, at the date of that agreement, exist.

The Lords framed their judgment upon the general point ; and as the act was a public statute, and the words clear and general, without making any exception, a very considerable majority was of opinion that no relief could be given. Though they could explain an act of the Legislature, they had no power to supply or correct it ; and could even give it no other interpretation than the precise terms used naturally and positively authorised. It was also observed, That as there appeared to be a hardship in this case, the town of Dumbarton was entitled to bring an action of damages against the town of Glasgow upon the warrandice in the contract, so far at least as regarded the old duties

The judgment was, “ In respect the words of the act of Parliament are general, imposing the duty in question on all ships or vessels coming to the Broomielaw or harbour of Glasgow, find they can give no relief to the town of Dumbarton in this action ; and therefore dismiss the process of declarator at their instance.”

In consequence of the suggestion from the Bench, the town of Dumbarton brought a process of relief upon the warrandice in the contract 1700 ; and in a reclaiming petition, craved that it might be reported and conjoined with the declarator of exemption. Upon advising the petition and answers, it was conjoined with the preceding process. The town of Dumbarton was afterwards found entitled to the benefit of the contract ; and a remit made to the Lord Ordinary to ascertain the proportion of dues they were to pay.

Lord Ordinary, *Auchinleck*.
Clerk, *Campbell*.

For the Town of Dumbarton, *A. Lockhart*.
For the Town of Glasgow, *Adv. Montgomery, Sol. H. Dundas, et alii*.

Fac. Coll. No. 106. p. 320.

1772. November 21.

WILLIAM ANDERSON, Factor upon the Personal Estate of David Wardrobe, Merchant in Edinburgh, *against* DAVID WARDROBE, Surgeon in Edinburgh.

By this act, passed during the session of Parliament 1772, it is enacted, “ That no arrestment of a debtor’s personal estate, or any part of it, used at any time within 30 days before an application for a sequestration of such personal estate, under the authority of this act, shall give any preference to the arresting creditor, in the event of a sequestration taking place.”

By the last clause of the act it is enacted, “ That the present act shall continue and be in force for seven years from the said 15th day of May, 1772, and to the end of the then next session of Parliament, and no longer.”

No. 8. The same period is mentioned in other clauses of the act, touching promissory notes, and other alterations of the former law not connected with bankruptcy.

Upon the 7th of May, 1772, David Wardrobe, surgeon, creditor to David Wardrobe, merchant, charged him with horning, and, on the said 7th and 8th of May, likewise used arrestments; and, upon the 14th of May, he executed a pouncing of his shop goods.

Upon the 2d June, 1772, certain creditors of David Wardrobe, merchant, who had acceded to a trust-right, executed by him upon the 12th of May, on the footing that the bill which had been brought in to Parliament, either then was, or would be, a law, applied to the Lord Ordinary on the bills, to have the personal estate of their debtor sequestrated; and his Lordship granted warrant for serving the petition upon the debtor, in terms of the statute.

It being surmised that the bill had not got the royal assent when the petition was presented, the creditors made a second application on the 5th of June; and, upon the same ground, they made a third application on the 11th of June, and the same deliverance was given upon all the petitions.

Upon the sitting of the Court, the creditors presented a petition, stating what had passed, and praying the Court to "conjoin the three petitions, to sequester the personal estate of the said David Wardrobe, if no sufficient objection is made thereto, to appoint Mr. William Anderson, writer in Edinburgh, factor on the said personal estate, and to allow his act of factory to be extracted upon the three petitions," &c.

Upon advising this petition, an interlocutor was pronounced, which conjoined the three petitions before mentioned with the last petition, and sequestrated the personal estate belonging to Mr. Wardrobe, &c. in terms of the statute; "reserving always to the said David Wardrobe, surgeon, &c. all claim of preference competent to them on the subjects respectively affected by their diligences, and to all others concerned, their objections thereto, as accords."

The debtors of the bankrupt in whose hands David Wardrobe, surgeon, had used arrestments, having raised a multiplepouncing, a competition ensued between Anderson the factor and Wardrobe the arrester, who in this question was held as the defender.

In point of fact, the defender set forth, That the act received the royal assent only upon the 9th of June, posterior to the two first applications, and prior to the last one; and even the last one was made before any advice could reach this country of the act having passed. But what chiefly required attention was, that the defender's arrestments, on the 7th and 8th of May, were more than 30 days prior to any application that could be made under the authority of the act, and, indeed, more than 30 days prior to the existence of the act, *i. e.* prior to its receiving the Royal assent. Hence he maintained, that his arrestments having been laid on 30 days before the act had an existence, the same could not be affected by the retrospect in that statute.

As to the factor's plea, founded upon the clause first recited, that these arrestments do fall under the retrospect of the statute, because they were laid on within 30 days of the two applications made upon the 2d and 5th of June; for, that it makes no difference whether the act was then passed or not; because, by a fiction of law, every British statute, after it does pass, is held to operate and take effect from the first day of the session of Parliament, all acts passing in one session bearing the same date, viz. the first day of the session;—argued, The defender has no occasion to enter into the general question, how far any such presumption is acknowledged by the law of Scotland with respect to the date of statutes, either formerly passed by the Legislature of Scotland, or now by the Parliament of Great Britain; for, that, supposing the rule to be the same here as in England, it fails in its application to the present case in two very essential particulars:

In the *first* place, this act contains a certain period of commencement and of endurance. The operation of the statute is to begin upon the 15th day of May, 1772, and to last for seven years from that date, and to the end of the then next session of Parliament, and no longer; which is just the same thing as if the statute had borne, that the law of Scotland, with respect to arrestments and other diligence, was to receive no alteration except during that interval, and that the ancient practice was to continue in full force till the said 15th of May; and then, and no sooner, was an arrestment to come within the sanction of the statute.

In this view, it is immaterial what date we shall affix to the passing of the statute, for, granting it to have, *de facto*, as well as *præsumptione juris*, passed into a law upon the first day of the session of Parliament, still its operation was suspended till the 15th day of May, and therefore it cannot have any effect upon the defender's arrestments, which were used on the 7th and 8th days of May.

The defender, in short, had a right to proceed upon the footing of the common law of Scotland, down to the day at which it was fixed by the statute, that the new regulation should take place. Nothing is more common than for statutes to prohibit certain things from being done, after such a period therein specified, which may be lawfully done before that period. The very prohibition, after the time limited in the act, implies, that the thing is lawful, and may be done within the time thus limited.

It is of no consequence that, in the present case, the sequestration, when awarded under the authority of the act, is declared to have a retro-operation, so as to affect all diligence within 30 days, for still this cannot go beyond the term at which the act itself is to commence. If there are 30 days between the commencement of the act and the application for a sequestration, the clause will have its full effect, but not otherwise; for it were an absolute inconsistency to declare that the act shall have no operation till after a certain day, and yet that the operation of it may be drawn back beyond that day.

But, in the *second* place, the supposed rule of law with regard to British statutes, is inapplicable to the present instance, for another reason, because in fact no application was made for a sequestration under the authority of the act of Parlia-

No. 8. ment, till the 11th of June, which was more than 30 days after the defender's arrestments.

It is true two applications were made on the 2d and 5th of June, but not under the authority of the act of Parliament, because at that time the act had not passed, the royal assent had not been given, and there was no such law in existence. The bringing a bill into Parliament, or even its passing both the House of Commons and the House of Lords, does not make it a law. In order to this, the finishing hand must be given by the royal assent, and then, and not before, it is a statute or act of Parliament; Blackstone, B. I. Chap. 2. § 6. and Introd. § 2.

Pleaded by Anderson the factor: It is a settled maxim in Legislature, that all acts of Parliament are held to bear date the first day of the session of Parliament in which they are passed; that it is not competent for any British judicature whatever to enquire into the dates or periods when bills pass the Houses of Parliament, or receive the Royal assent; that Judges have nothing to do with those things, but are bound to take and to hold every statute as being passed and bearing date the first day of the session of Parliament in which it is passed; Bacon's Abridgment, vol. 4. p. 636. Viner. vol. 19. p. 495. Henley *versus* Jones, Sed. rep. 18. Carloi. 2.

If no particular term of commencement had been specified in the act, the pursuer cannot doubt of its being the judgment of the Court, that the act was to be held as passed upon the first day of the last session of Parliament, and that the several applications made by the creditors for sequestration, upon the 2d, 5th, and 11th of June, were all equally good and effectual.

But the pursuer does understand the commencement of the act to have been postponed by the last clause of it till the 15th of May; and therefore, the plea grounded thereon by the defender, viz. that his arrestments being used upon the 7th and 8th of May, prior to the commencement of the act, the act cannot operate against them, falls next to be considered.

In answer thereto, the words of the law import a general and express enactment, that no arrestment, used within 30 days before an application for a sequestration, shall give any preference to the arresting creditor, but that the effects are to be brought in as a part of the divisible fund.

The propriety or impropriety of giving statutes a retrospect, is a matter of proper consideration for the Legislature, with which Judges have nothing to do, and who are bound to give a retrospective effect to statutes, when they are conceived in words, importing such to have been the intendment of the Legislature. There are no words in this statute which limit the operation of it to arrestments used after the 15th of May; on the contrary, the words used are such as clearly indicate and import, that the law was to operate against every arrestment used within 30 days of the application for a sequestration, without distinguishing whether the arrestment was used before or after the 15th of May.

If it had been the intendment of the Legislature to limit the operation of the act to arrestments used after the 15th of May, and within 30 days of the applica-

tion for a sequestration, that would have been done by a special clause or proviso. But it is evident, not only from the omitting of such a clause, but likewise from the words used, that the Legislature had no such intention. And indeed there was no just reason for introducing such a limitation. The nature of the bill before being brought into Parliament, was well known in the country. The contents of the bill, after being brought into Parliament, came to be known to every person desirous to know them. The object of the bill with regard to arrestments, was to prevent an effect in them in cases of bankruptcy, that was a reproach upon the justice of the country. And, therefore, when the Legislature declared the commencement of the statute to be upon the 15th of May, and enacted, that no arrestment should have effect, used within 30 days of an application for a sequestration; it must have been intended to affect arrestments used before, as well as after the 15th of May, if within 30 days of the application for a sequestration. The law bears date the first day of the session of Parliament; but the commencement is postponed till the 15th of May; till then, no application could be made under the authority of the act. But every application, after the commencement of the act, is made to affect all arrestments within 30 days of the application, whether used before or after the 15th of May; and, therefore, the application in this case upon the 2d and 5th of June being within 30 days of the arrestments used by the competing party, the act must operate against these arrestments.

If the Court were not to construct the statute in the manner contended for by the pursuer, the consequence would be, that Wardrobe, the competing party, would retain, for his own payment, the whole shop goods pointed by him, which are of considerable value, a thing, it is believed, he never expected, as the pointing was executed within 30 days of the third application made by the creditors for a sequestration upon the 11th of June, when he admits the bill to have got the Royal assent, and which certainly would be much contrary to the words and spirit of the law, which enacts, "That no pointing of a debtor's effects, not completely executed 30 days before an application for a sequestration of the debtor's personal estate under the authority of this act, shall give any right or preference to the pointer, in the event of a sequestration taking place."

"The Lords prefer William Anderson, the factor, and remit to the Lord Ordinary to proceed accordingly."

A reclaiming petition for the defender was refused without answers.

N. B. The thing that chiefly created any difficulty here, was the clause specifying a particular day from which the act was to have commencement; but the Court, *tota lege perspecta*, got over the difficulty, and held this act to be no exception from the general rule as to the date of a British statute; the leading clause founded on by the factor being generally conceived, and the giving it the effect he pleaded for was properly no retrospect; and that the intendment of the posterior clause was not to bar the effect of the act, which fell to be held as having passed in January 1772, but only to determine its continuance, being a temporary statute, and,

No. 8. on that account, proper to fix *a qua tempore* it should commence. And although perhaps the applications for the sequestration before the Royal assent to the bill might have been strictly refused, yet, as they were not refused, and being afterwards granted, and the act itself having come, whose legal date only can be regarded by Judges, it was but right to give them effect, in a claim of creditors so very equitable.

There are a decision of this Court upon the general point, July 7, 1758, Robertson against his Majesty's Advocate, No. 447. p. 11280. *voce* PRESCRIPTION; and a later judgment of the House of Lords between Panter and Turner, and his Majesty's Attorney-General, May 25, 1772, (See Appendix) both cited in this cause.

Act. Advocatus.

Alt. M^cQueen et Ilay Campbell.

Reporter, Stonefield.

Fol. Dic. v. 4. p. 298. Fac. Coll. No. 30. p. 80.

* * By act 33. Geo. III. it is now declared, That every act of Parliament to be passed after the 8th of April 1793, shall be indorsed in English by the clerk of Parliament, with the day, month, and year, when the same shall have passed and received the Royal assent, and such indorsement shall be the date of its commencement, unless another term of commencement shall therein be provided.

See APPENDIX.