longer a wife. She may re-establish her *status* by a reduction or declarator of marriage. Suppose the pursuer M. de la Motte were not to enter her appeal to the House of Lords till the fourth year after sentence, that appeal would place her just as if she were in a reduction. By her argument she might claim aliment *retro*, and then, having obtained it, she might drop her appeal.

HENDERLAND. I never heard of any demand for aliment or expenses in a case like this. Final sentence in the Act of Parliament means the final sentence of the consistorial court.

GARDENSTON. Nothing is so apt to puzzle as the putting of cases. As long as the lady acquiesces she has no claim. When she brings an appeal it will be considered how far she has been *in mora*: should the cause be appealed after four years, that *mora* may perhaps exclude aliment.

DREGHORN. If a wife be entitled to money here, after she ceases to be a wife, she may have the like demand in the House of Lords. This is very inexpedient: few men could afford, on those terms, to sue for a divorce. The expense would be dreadful: even at present, from judicial proceedings much money is bestowed in the Commissary Court. [He expressed himself too strongly; I set down his corrected opinion.] A woman has, at the worst, a relief here and elsewhere *in forma pauperis*. I do not mean to bind myself down never to allow any thing to a divorced woman. But I think that here there was no *bona fides* in attempting to set aside the judgment of the consistorial court. During a practice of thirty years I have never seen an unjust prosecution against a woman in the Commissary Court.

ESKGROVE. The maxim, *res judicata pro veritate habetur*, does not apply to a reduction of the decreet of an inferior court. That decreet is no more than a summons. Till the decreet of this court is pronounced there is a *lis pendens*.

On the 16th December 1788, "The Lords found the petitioner entitled to aliment and expenses;" altering their interlocutor of 8th August 1788.

Act. W. Stewart. *Alt.* R. Blair.

Diss. Justice-Clerk, Swinton, Henderland, Stonefield, Hailes, Dreghorn.

Alt. Alva, Gardenston, Rockville, Monboddo, Ankerville, Eskgrove, President; [carried by his casting vote.]

Non liquet, Dunsinnan.

1789. *February* 3. WILLIAM RIDLEY *against* TRUSTEES of HAIG and COMPANY.

PRIVILEGED DEBT.

Wages, or a yearly salary to the overseer of an extensive distillery, found not a privileged debt.

[*Faculty Collection, X.* 101; *Dictionary*, 11,854.]

GARDENSTON. The principle is just, that privileges are not to be extended.

Custom has given a preference to menial servants, though I do not see a good reason for that. The distinction in the case of *Melville* against *Barclay* was on account of universal practice, which I and all sheriffs know. Were the judgment in this case to go for the servant, it would be a great alteration in the law. By the same rule the preference might be extended to merchants' clerks.

SWINTON. I remember well the case of Barclay. The Court was well pleased that, on inquiry, the practice turned out to be so general, because there was thought to be justice in it. I think that this case ought to be judged on the same principle.

ESKGROVE. I see no practice extending the case of Barclay to other cases. That case did not rest on principle alone; but there was the practice of the inferior courts, where questions concerning servants' wages are most commonly agitated. Here the Court is called upon to extend a supposed principle of expediency much beyond any practice.

JUSTICE-CLERK. The general principle of the law of Scotland is against privileges and preferences; all such are *stricti juris*. There might be as good reason to give preferences in the case of bankruptcy as the case of death: but the Court would not listen to that in the case of Barclay; they required practice, and on that practice they proceeded.

PRESIDENT. Were we to give way to this claim, it would have the effect of altering the law of Scotland in a very important particular. Property is transferred when *fides habita est de pretio*: so here personal labour was transferred when *fides habita de mercede solvenda.*

MONBODDO. The case of Barclay went upon constant practice, which is equal to law. Every thing that a merchant earns is by the labour of his clerks, and yet they have no preference.

On the 3d February 1789, "The Lords repelled the claim of preference."

Act. Ch. Hope. *Alt.* A. M'Conochie.

Reporter, Monboddo.

1789. *January 25.* ROBERT WILLIAMSON *against* CHARLES MERCER.

GLEBE.

"THE Lords were of opinion that a glebe, having been designed and possessed for 40 years, an heritor cannot challenge the possession as being beyond the dimensions of a glebe; but that encroachments made by the present incumbent must be deducted; and they remitted to the Ordinary to inquire into and ascertain the quantity,"—varying the interlocutor of Lord Monboddo.

For Mr Williamson,—D. Williamson. *Alt.* J. Haggart.

Diss. Monboddo, Eskgrove, Ankerville.