

wise take place on a bankruptcy, between masters and servants, to the great prejudice of the creditors at large, the law ought to be the same, wherever the same inducements occur.

No 23.

Answered ; Those privileges which stand in the way of a rateable distribution of the effects belonging to a bankrupt, being a deviation from the common rules of law, and, in general, taking their origin from limited and imperfect notions of commercial utility, have of late been justly restrained within the narrowest bounds. Unless authorised by such a train of decisions as cannot be departed from without shaking the public security, the tendency of our Courts, of late years, has uniformly been to discourage all claims of this sort.

The preference here demanded, so far from deriving any support from former precedents, is quite inconsistent with the daily practice. Although servants employed in husbandry have been, by inveterate custom, allowed to receive their wages before all the other creditors, the same privilege was lately, by a solemn decision, refused to mechanics and artisans. And in England, where every requisite encouragement is held out to industry and manufactures, it has never been thought expedient to break through the rule of law in favour of servants of any description ; 23d January 1779, *Melville contra Barclay*, No 20. p. 11853. ; 31st January 1781, *Whyte contra Chrystie*, No 21. p. 11853.

It was *urged* as a circumstance favourable to Mr Ridley's claim, that the proceeds of the spirits falling under his superintendance were much more than sufficient for his payment.

The interlocutor of the COURT was as follows :

" THE LORDS, on the report of Lord Monboddo, and having advised the informations for the parties in this cause, they sustain the defence, and assoilzie ; reserving to the pursuer to rank on the bankrupt-estate, in the same manner as the ordinary creditors."

A reclaiming petition was afterwards offered for Mr Ridley, in which, without endeavouring to obtain an alteration of the judgment on the point of law formerly argued, he maintained, that, in consequence of certain proceedings between him and the trustee, he was entitled to recover his salary, without any deduction.

This petition, with the answers, was remitted to the Lord Ordinary.

Lord Reporter, *Monboddo*. Act. *Hope*. Alt. *Maconochie*. Clerk, *Orme*.
C. *Fol. Dic. v. 4. p. 142. Fac. Col. No 57. p. 101.*

1802. May 15.

SHEDDAN and OTHERS *against* GIBSON.

UPON the death of George Haldane, Esq; of Gleneagles, mournings were furnished to his widow, daughters, and servants, by Archibald Gibson, merchant in Edinburgh, who, in a process of multiplepoinding brought by the exe-

No 24.
Widow's
mournings
are a privi-
leged debt
upon the
funds of the
deceased.

No 24. cutor-creditor of the deceased, claimed the payment of his account as a preferable debt. This claim was resisted by the personal creditors of Haldane, who contended, That Gibson had no right to rank even *pari passu* with onerous creditors.

THE LORD ORDINARY found, " That the widow's mournings are a preferable debt upon the funds of the defunct," and sustained Gibson's claim to the extent of these furnishings.

The creditors reclaimed to the Court against this interlocutor, and Pleaded; The law of Scotland protects creditors against all dilapidations of the debtor's estate after his death, and does not even allow an aliment to the widow to come into competition with onerous creditors, Bankton, B. 3. Tit. 8. The only exception to this general rule is, the expense of the funeral, and of the medicines furnished during the last illness of the deceased. The articles furnished by Gibson are not to be considered as furnishings for Mr Haldane's funeral. However suitable, therefore, these mournings may be, he is not a preferable creditor; Stair, B. 3. Tit. 8. § 72.; Erskine, B. 1. Tit. 6. § 41.; Hastie, November 10. 1671, No 124. p. 5922.; Creditors of Scott, July 15. 1713, No 120. p. 5916.; Hall against Macaulay and Lindsay, January 19. 1753, No 67. p. 4854.; Neilson, November 21. 1776, No 375. p. 6165.

Answered; Funeral rites have always been considered as one of the duties of Christianity, and funeral charges as a preferable debt. This privilege is not confined to the expense of actual interment, but comprehends also those concomitant expenses which the custom of the country renders necessary or decent; and decorum requires that a widow should be provided with mournings suitable to her rank and station. Such furnishings are therefore really a part of the funeral expenses; F. F. l. 11. tit. 7.; Voet, § 9. 14. b. t.; Van Lewan, B. 4. tit. 9. § 10.; Hall against Macaulay and Lindsay, January 19. 1753, No 67. p. 4854.; Gordon against Stewart and Others, February 19. 1743, No 372. p. 6161.

THE COURT unanimously adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Dunsinnan*.
Alt. *W. Clerk*.

For the Creditors, *Montgomery*.
Agent, *Ja. Gibson*, W. S.

Agent, *W Dallas*, W. S.
Clerk, *Colquhoun*.

f.

Fac. Col. No 38. p. 79.

See APPENDIX.