FORREST v. HANSON.

Case No. 4,942.

{1 Cranch, C. C. 12.}[1]

Circuit Court, District of Columbia. June Term, 1801.

ATTACHMENT OF PRIVILEGE.

A clerk of this court is not entitled to sue by attachment of privilege.

Action on the case for slander.

The plaintiff {Uriah Forrest} being clerk of the court, had sued out an attachment of privilege, and now moved for a rule upon the defendant {Samuel Hanson} to plead on some day during the present term.

It was contended, on the part of the plaintiff, that the privileges of the officers of courts is a part of the law of Maryland, which, by the act of congress concerning the District of Columbia,—27th February, 1801, § 1 (2 Stat. 103),—was adopted as the law of this part of the District. That the legislature of Maryland had acknowledged the principle, by passing an act (1799, c. 29) restraining the application of it in some cases. That, in Maryland, it is not a matter of favor, but of right, to rule the defendant to plead at the first term. The oldest writers consider it as part of the common law of England. 4 Bac. Abr. 215, 218, tit. "Privilege," B; 2 Inst. 55, 551; 4 Inst. 71; Bract. 99, 112. It is the privilege of the court, and not of the officer. It is founded on the same reason and principle as the privilege of witnesses, jurymen, &c., to be free from arrest. 4 Bac. Abr. 222, 223. No court has power to issue a process not authorized by common, or statute law; the attachment of privilege is not authorized by statute law; it must therefore have issued as a common law process. Salk. 543, 544. In Maryland an attorney must be sued by bill of privilege; if he does not appear, he will be forejudged; and then being no longer an attorney, a capias may issue against him. Brown v. Van Braam, 3 Dall. {3 U. S.} 344. The act of congress respecting the courts of the United States authorizes them to make rules not repugnant to the laws and constitution of the United States.

On the part of the defendant, it was said that the privilege of the officers of the courts at Westminster is no part of the common law. It depends altogether upon the usage and custom of the courts. It extends only to the court of king's bench, the common pleas, the exchequer, and court of chancery. It is not claimed by all courts of record, as such. The privilege of officers of the common pleas must be certified to the king's bench, and that of the officers of the exchequer must be proved by the red book. 17 Vin. Abr. 518, 530, 531, tit. "Chancery"; articles 12, 16, "Stannary Courts"; 4 Bac. Abr. 219, 224; Id. "System of Pleading," 343, 348. It is to be presumed that it was originally granted to certain courts only, by the original grant or chatter by which the courts were erected. By the charter to Lord Baltimore, he was empowered to erect courts, and if the privilege is claimed by the

courts in Maryland, it may be presumed to be claimed under the charter (section 7). See Act Assem. 1637; 2 Rich. Pr. Com. Pl. 176, for the form of a plea of privilege.

KILTY, Chief Judge. It is the unanimous opinion of the court that the rule should not be laid, and that the privilege is not to be allowed. The court consider that the privilege, as exercised by certain courts in England, does not depend on any principle of the common law, extending, generally, to all judicial bodies, but is in the nature of a particular grant or charter to a certain court.

The exercise of the privilege in the state of Maryland depends on the like principle, and flows from a grant or charter to the courts there. The adoption of the laws of Maryland in this county, under the law by which this court is established, does not give to the court the privileges which have been thus derived to the courts of Maryland, and therefore they are not authorized or bound to extend to their officers the benefits or disadvantages of the privilege contended for; and have not the power to extend it to the prejudice of other persons. See 2 Hawk. P. C. 2, 4, 5.

{NOTE. See Forrest v. Hanson, Case No. 4,943.}

[1] {Reported by Hon. William Cranch, Chief Judge.}