

No 180.

' THE LORDS found no sufficient evidence to show that Romanis had absconded, in terms of the act 1696 ; and therefore repelled the reasons of reduction.'

Reporter *Coalston*. For Finlays, *Jo. Maclaurin*. For Aitchison, *Geo Wallace*. — Clerk.

*Fol. Dic. v. 3. p. 54. Fac. Col. No 54. p. 95.*

*A. Elphinston.*

No 181.

A debtor in the custody of a messenger, but not imprisoned, procured a bond of presentation, and failed to appear at the time appointed. These facts, joined with insolvency, found insufficient to constitute him bankrupt in terms of the act 1696.

1768. *March 3.*ELLIOT *against* SCOT.

THE common debtor having been apprehended upon caption, escaped imprisonment, by finding security in a bond of presentation, but failed to appear ; whereupon a protest was taken, and diligence raised upon the bond.

In a ranking, certain securities, granted within 60 days of the arrest, were objected to, as falling under the sanction of the statute 1696.

*Pleaded* for the objector : *1mo*, The design of the statute was to provide a remedy against the frauds of bankrupts ; and, though it specifies certain particular alternatives, the remedy was meant to extend to every case, where ultimate personal diligence should be used, without effect. Equivalents, therefore, will supply the place of those alternatives. Being in the custody of a messenger is equivalent to actual imprisonment : A sift, on a bill of suspension, is equally ineffectual in the one case as in the other : And, though a simple arrest may be attended with less notoriety than imprisonment, it is more publicly notorious than the other alternatives of absconding or deforcement. Upon these principles, it was determined in the House of Lords, that a debtor, being actually in the custody of a messenger, was imprisoned in the true intent and meaning of the act 1696 ; 18th February 1755, *Creditors of Woodstone contra Scot*, No 178. p. 1102.

*2do*, The debtor became notour bankrupt in another view ; by failing to appear in terms of the bond of presentation, which must be considered as absconding from diligence.

*Answered* to the *1st* :—The statute is correctory, and, therefore, does not admit of equivalents. Accordingly, incarceration on an act of warding, is not deemed imprisonment within the statute : Far less will detention for an hour or two in the hands of a messenger ; a thing which might well escape the observation of the lieges, who would be ensnared by such an extension of the law. The decision, in the case of the *Creditors of Woodstone*, is a single judgment, and hardly reconcileable to principles.

To the *2d* :—The debtor may have failed to present himself from different accidental circumstances, without an intention to abscond, which will not be presumed without evidence.

' THE LORDS found, That, although the principal debtor be proved to have been in the custody of a messenger, in virtue of letters of caption ; yet this,

joined with insolvency, is not sufficient to constitute him a bankrupt, in terms of the act 1696. No 181.

For Elliot, *Wight*.

Alt. *Crosbie*.

*Fac. Col. No 66. p. 306.*

*G. Ferguson.*

1771.

FERGUSON *against* SMITH.

No 182.

FOUND that where a debtor's insolvency is notorious, and he is under diligence by horning and caption, a fruitless search following on the caption, at his usual place of residence, is sufficient evidence of his having absconded. See No 179. p. 1104.

*Fol. Dic. v. 3. p. 54.*

1774. July 5.

ALEXANDER FRASER *against* GEORGE MONRO.

No 183.

THE question which here occurred was, Whether a person (Francis Knowles) who had granted a disposition in favour of one of the parties, of date 5th November 1766, which was now challenged by the other, as falling under the sanction of the statute 1696, was, at the time of granting, within the description of the aforesaid statute?

This case decided in conformity with the judgment of the House of Lords in No 178. p. 1102.

Upon this point, the pursuer condescended upon hornings and captions that had been issued against Knowles; and he offered to prove that Knowles was, about the same period, and within sixty days of the disposition, apprehended by messengers, and taken into custody by them; and although he was not actually imprisoned, yet the foresaid circumstances ought to be held as equivalent, to the effect of rendering him bankrupt, in terms of the statute 1696, agreeably to what was found by the House of Lords, in the case of the Creditors of Woodstone *contra* Colonel Scot, No 178. p. 1102.

A proof was accordingly brought, which amounted to this, That Knowles had been apprehended upon a caption upon the 17th October 1766; and remained with the messenger in a public-house for about the space of two hours, until a bond of presentation was made out; and, upon another occasion, having been apprehended, had remained in a public-house with the messenger for about three or four hours, at which time the whole debt was paid up, except about L. 3 Sterling; and the question came to be, Whether these circumstances were sufficient to bring him under the description of the statute?

*Pleaded* for the defender: As the criteria of bankruptcy are expressly pointed out in the statute, so, in constructing this statute, productive of so strong and extraordinary effects, the Court have been in use to admit of no equivalents, or