

1678. *January 18.* CORNELIUS NEILSON *against* The CLERK of His Brewery.

No 2.
Found that a
baron-bailie
has not the
power of sum-
mary incarce-
ration.

CORNELIUS NEILSON having incarcerated the Clerk of his brewery by a warrant from the Bailies of Leith, he gave in a bill of suspension, with a charge 'to set at liberty,' upon this reason, That he was unwarrantably incarcerated by the Bailie of Leith, who is but a baron bailie, not having the privilege of summary incarceration, which is only competent to Royal Burghs within their burgh, but not to the Bailies of their barony, which are not burghage. It was *answered*, That the Supplicant being a servant, liable for the count of a brewery and debtor for a great sum, and having no visible estate, but refusing compt, and being *in meditatione fugæ*, he ought to be detained in prison till he find caution, at least *judicio sisti*.

THE LORDS found, That the incarceration by the Baron bailie was unwarrantable; but the LORDS ordained the Supplicant to be continued in prison by their authority upon the foresaid reasons, till he found caution to be present at the diets of process or else to pay the debt; and ordained the account pursued for to be advocated before themselves from the Bailie of Leith.

Fol. Dic. v. 1. p. 571. Stair, v. 2. p. 596.

1680. *November 11.*

JAMES CORNWALL of Bonhard *against* ANDREW GRIERSON-BONHARD.

No 3.

By a bill craves a warrant to stop his own salt which the said Andrew was transporting beyond seas, &c. THE LORDS found it not in their power to grant such summary execution against one who was not a bankrupt, unless he would prove he were such as in Mason's case, No 1. p. 8547; but referred him to the Admiral who would summarily arrest the ship.

Fol. Dic. v. 1. p. 571. Fountainball, MS.

1700. *January 3.* WATSON of Dunikier *against* The EARL of LITHGOW.

No 4.
A *meditatione fugæ* warrant granted against a witness, and a protection granted to him against his creditors.

WATSON of Dunikier pursuing the Earl of Lithgow, for payment of a debt of L. 10,000 Scots contained in his predecessor's bond; the defence was, payment by Carnock, the principal debtor; and being retired by him, was found amongst his papers, and given back to the creditor's heir for a little money; and William Paton of Panholes, writer, being one of the parties concerned in this mystery, and cited by a first diligence not yet expired, a summary warrant was craved to apprehend him, because he was not only dealt with to abscond, but to retire out of the kingdom; and so their mean of probation might be eternally lost; and if the bill were given out to see and answer, that intimation

would make him instantly flee. THE LORDS considered the demand was extraordinary, to begin at a caption when the first diligence was not yet run; but in extraordinary cases, they had applied extraordinary remedies; and lately, in the case of a Frenchman running out of the country, they had imprisoned him till he should find caution to his creditors. And long ago, in 1672, Mason was summarily apprehended at the instance of Street and Jackson, Englishmen, his creditors, being *in meditatione fugæ*, No. 32. p. 4911. THE LORDS, in respect of the singularity of this case, granted a summary warrant to apprehend him. The next question was, if he should have a protection for a few days, seeing he was under the hazard of many captions, at the instance of sundry creditors; which also carried by plurality, the Earl of Lithgow's curators giving their oath, in the terms of the act of Parliament, that he was a material necessary witness; which the Earl of Home, as his tutor, gave, and thereon the protection was granted, and signed by those who voted for it.

Fol. Dic. v. 1. p. 571. Fountainhall, v. 2. p. 77.

No 4.

1700. February 21.

The EARLS of STRATHMORE and PANMUIR *against* ALEXANDER INNES.

ON a bill given in by the Earls of Strathmore and Panmuir, representing that Alexander Innes, writer to the signet, had sundry papers and some of their money in his hands, and was absconding, *et in meditatione fugæ*, the LORDS granted a summary warrant to apprehend him, not to be put in prison, but brought before the Ordinary upon the bills, who was to examine him; and, if he found ground, was either to put him under caution for his appearance, or commit him to prison, he being a member of the College of Justice.

Fol. Dic. v. 1. p. 571. Fountainhall, v. 1. p. 91.

No 5.

1727. June.

BARROWFIELD *against* WEATHERSPOON.

THE LORDS were unanimous, that upon application to any inferior magistrate, a debtor *sub meditatione fugæ* may be summarily incarcerated.—See APPENDIX.

Fol. Dic. v. 1. p. 571.

No 6.

1744. December 7.

SCOT *against* SANDILANDS and MANDERSTON.

AN officer who lived with his wife and family for several months in Edinburgh, going to join his regiment, a creditor apprehended him on a warrant on the act 1672, cap. 8. until he should find caution *judicio sisti et judicatum*

No 7.