

1715. February 18.

JEAN PITCAIRN *against* EUPHAN DEANS, and PRESTON of that Ilk, a Justice of the Peace.

No 31.

Found that a warrant granted by a Justice of the Peace, for imprisoning a married woman for a civil debt, was illegal, and therefore that he was liable in damages.

RALPH MORTON, writing-master, being under diligence for a debt contracted by Jean Pitcairn his wife, before the marriage; Euphan Deans, relict of Robert Newlands, glover, becomes caution for the same; and Morton having absconded, and Mrs Newlands distressed for the debt, she obtains a summary warrant from a Justice of Peace, without calling or certiorating Mrs Morton, to imprison her till she should relieve her of her cautionry: And the because in the warrant is, That Mrs Morton had circumvented Mrs Newlands, and was guilty of a premeditated cheat and breach of trust, was *in meditatione fugæ*, &c. In an application to the Lords, by complaint,

It was *alleged* for the plaintiff, *1mo*, That a Justice cannot grant a summary warrant for imprisonment, till the party be cited and brought before him, except only where there is appearance of breach of the peace, as is plain by the instructions to the Justices. *2do*, That she being *vestita viro*, could not be imprisoned for a civil debt; and though she could, a Justice of Peace is not a competent authority to imprison for such a cause. *3tio*, That this was of very bad consequence, for if a Justice of Peace can grant a warrant for summary imprisonment, upon no better instruction than a party's signing a complaint, all other diligence will for ever cease; and poor people, who are not able to find cautioners, must remain perpetually confined, and exposed to humour or ignorance.

Answered for Mrs Newlands, to the *first*, That upon any signed complaint of a crime, such as adultery, cheating, &c. which are not done by violence, (and therefore not properly breaches of the peace, but simple transgressions of the law) the Justices can attach till bail be found; and even in capital crimes, though they cannot judge, they can imprison, and present the criminals to the proper court, especially since they were put on the same footing with the Justices in England, where it is notour that almost all processes begin with arresting the person. To the *second*, That the argument militates against Mrs Morton, since her being *vestita* was the very reason for using this method, to attach her for fraud, because she could not be reached in common form. To the *third*, That there is no reason to fear these consequences; since, *1mo*, That it can scarce happen in an age that such a complicated injustice should be attempted; *2do*, No body who can by ordinary diligence force payment, will rest satisfied with a Justice's warrant, which at most lands in caution.

THE LORDS found, That the warrant granted by the Justice of Peace was illegal, being for imprisoning a married wife for a civil debt, and therefore

found that the said Justice of Peace was liable in expenses and damages to the plaintiff.

No 31.

Act. *Boswell.*

Alt. ———

Clerk, *Robertson.*

Fol. Dic. v. 2. p. 341. Bruce, v. 1. No 79. p. 95.

1715. February 19. LD. FULLARTON *against* Earl of KILMARNOCK.

No 32.

An unwarrantable decree being pronounced by the Justices of Peace, the LORDS nevertheless assolized them from the damages, but found the plaintiff liable for the same as *improbis litigator.*

Fol. Dic. v. 2. p. 341. Bruce.

* * * This case is No 219. p. 7503. *voce* JURISDICTION.

1750. January 3. ANDERSON *against* ORMISTON and LORAIN.

No 33.

HODGSON and Ormiston in Company grocers in Newcastle being creditors in L. 74 Sterling to Thomas Anderson, travelling chapman, late in Coldingham, wrote to James Lorain, writer in Dunse, to do the needful for recovery of their debt.

In a case of oppression, the Sheriff, as well as the pursuer and his doer, found liable in damages.

Lorain applied to the Sheriff, setting forth, That his constituents were creditors aforesaid, and were likely to be disappointed of their payment, for that Anderson's shop had been lately broke, and several of his effects stolen: That they were credibly informed his affairs were in disorder, that he was embezzling what remained of his effects, and designed to fly the country, therefore praying warrant to sequestrate his effects. And, of the same date, the Sheriff, without making any inquiry into the truth of these averments, or for ought that appeared, having so much as the grounds of debt laid before him, granted warrant to sequestrate, inventory, and value Anderson's effects, and to lodge the same in the house of Robert Corsar in Coldingham, whom, with David Ballantyne, he appointed to inventory and value the goods, to be made forthcoming to the petitioners and other creditors of Anderson.

This warrant was forthwith put in execution, so far that the goods were carried from Anderson's shop and inventoried, but the rest of the warrant was neglected; the goods were not lodged in the house of Robert Corsar, but, on pretence that he was not at home, in the house of one Idington; neither were they valued, as by the warrant had been directed. This happened on the 30th January 1741; and, in the meantime, decree having been obtained at the instance of Hodgson and Ormiston for the L. 74, arrestments were laid in Idington's hands by them, and also by Renton another creditor.