

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.

No 7.

solvi, as being *in meditatione fugæ*. THE LORDS, in respect that the officer was a burghess of Edinburgh, and no stranger, and that going to his regiment was no *fuga*, found him entitled to damages from the creditor.

Fol. Dic. v. 3. p. 400. D. Fa'c. Kilk.

* * * This case is No. 63. p. 1929. *voce* BURGH ROYAL.

1773. December 16.

No 8.

Dr ANDREW HERON of Bargaly, *against* Captain WILLIAM DICKSON of Ednam.

One whose residence is not in this country, may be arrested, when occasionally here, without regard to his having a land-estate in it, until he shall find caution, *judicio sisti*, at the suit of a native, upon belief that he is going out of the country, without his alleging, or giving oath of credulity, that his debt, or is in *meditatione fugæ*, as in the case of residents.

CAPTAIN DICKSON having a claim of debt against Dr Heron, applied by a petition to the Sheriff of Edinburgh, setting forth, ' That Dr Heron, a native of Scotland, but who, for some time, had resided abroad, was debtor to James Dickson of Ednam, now deceased, in the sum of L. 150 Sterling, by two promissory notes, to which the petitioner had right as executor testamentar, decerned and confirmed to his uncle: That the said two notes were not at present in his custody, but in his repositories at Kelso: That he had wrote for them, and expected them in a few days; but that, in the mean time, he was ready to depone to the verity of the debt: That Dr Heron was at present, and for some time past, had been in this country, residing in and about Edinburgh, waiting, as the petitioner was informed, for an opportunity of again going abroad, so as to deprive him of the payment of the debt justly due to him;' and the petitioner prayed the Sheriff ' to consider the premises; and, as the petitioner is ready to make oath on the facts above stated, to grant warrant to apprehend and incarcerate the said Dr Andrew Heron in the tolbooth of Edinburgh, therein to remain until he find caution, *judicio sisti et judicatum solvi*, in any action to be brought at the petitioner's instance against him, for payment of the above sums; or to give such relief in the premises as shall seem meet.'

Upon this petition's being presented to the Sheriff, the confirmed testament, in which the aforesaid two promissory notes are contained, was produced; and Captain Dickson emitted the following deposition: ' That the said two sums were justly resting to the deceased James Dickson, at the time of his death; and are still unpaid; and that he has good reason to believe, and is credibly informed, that the said Dr Andrew Heron is about to leave this kingdom.'

The Sheriff thereupon granted warrant to apprehend and incarcerate in the tolbooth of Edinburgh, the person of the said Dr Andrew Heron, until he should find caution, *de juâicio sisti*, in common form. Dr Heron having been committed upon this warrant, presented a bill of suspension and liberation; and also a petition and complaint to the Court of Session, complaining of these proceedings as illegal and oppressive: And the Court having passed the bill of