

incumbent upon him to prove the fact, either directly, or at least by showing, that, under the eye of Mr Adams, Wilson was in use to hire out the vessel.

No 80.

Fol. Dic. v. 4. p. 231. Sel. Dec. No 148. p. 204.

1784. July 6.

JAMES STEWART *against* DUNCAN MACDONALD, HUGH CHISHOLM, and
GEORGE BEAN.

JAMES STEWART being apprehended by Hugh Chisholm, a messenger, for a debt due to Duncan Macdonald, consigned the money in the hands of the magistrate, to whom he was presented for incarceration, and was set at liberty. A few hours after, he was again apprehended, on the former diligence, by Hugh Chisholm, in consequence of directions from George Bean, the agent for Mr Macdonald, the creditor, and thrown into prison, where he lay for several days.

No 81.
A creditor
not respon-
sible for the
misconduct of
an agent or
messenger in
the execution
diligence.

In an action of damages founded on these proceedings, the LORDS pronounced the following interlocutor:

“ Find, That the imprisonment after consignment was illegal and oppressive, and that George Bean the agent, and Hugh Chisholm the messenger, are conjunctly and severally liable in damages and expenses; but, in respect there is no evidence that the defender, Duncan Macdonald, was in any degree accessory to the imprisonment of the pursuer, therefore assoilzie him from the process.”

Lord Ordinary, *Braxfield.*

Act. Solicitor-General *Dundas, W. Miller.*

For the Creditor, *Lord Advocate Campbell, G. Buchan-Hepburn.*

For the Agent and Messenger, *Mackintosh, H. Erskine, Honyman.*

Clerk, *Home.*

G.

Fol. Dic. v. 4. p. 231. Fac. Col. No 146. p. 261.

S E C T. XII.

Servant dismissed between Terms.

1750. June 20.

RAE *against* The PARTNERS of the Glass-work Company at Leith, and MILNE,
their Clerk and Cashier.

RAE brought an action in August 1748, before the Justices of the Peace, against the said James Milne, for a year's wages, as one of the teasers to the

No 82.
Where a ser-
vant is dis-
missed be-
tween terms,