

1785. August 9.

JAMES SPEDDING *against* MESSRS HODGSON and DONALDSON.

A MESSENGER having gone to the house of Thomas Bushby, in order to execute a caption against him, and having searched for him there, without being able to find him, reported this proceeding in his *execution*.

In a competition of Bushby's creditors, it was afterwards debated, Whether the above circumstances, joined to his insolvency, were sufficient to bring him under the description of the statute of 1696.

*Observed* on the Bench: The absence of a debtor from his dwelling-house at a time when he is notoriously insolvent, will create a *presumptio juris* of absconding. Not being, however, a *presumptio juris et de jure*, it may be elided by a contrary proof.

THE LORDS found, 'That Thomas Bushby, by the execution of search produced, fell under the description of the statute 1696.'

Lord Ordinary, *Alva*. A&. *Elphinston*. Alt. *G. Fergusson*. Clerk, *Home*.  
Stewart. *Fac. Col. No 229. p. 356.*

No 187.

In this case, likewise, the execution of search sustained as evidence. There is a *presumptio juris* of absconding, if a person notoriously insolvent be absent from his house; but this presumption may be elided by contrary proof.

1785. November 17: GEORGE MAXWELL and Others, *against* ADAM GIB.

MAXWELL, and other creditors of Ebenezer McGeorge, who was insolvent, sued on the act of Parliament of 1696, for reduction of an heritable security granted by their debtor in favour of Gib. In order to establish the statutory bankruptcy, the pursuers produced several executions of caption, bearing, 'That the messenger had apprehended the debtor; but that, without imprisoning or taking him into custody, he had afterwards liberated him on promise of payment.'

The Court repelled that reason of reduction.

Reporter, *Lord Alva*. A&. *Corbet*. Alt. *H. Erskine*. Clerk, *Home*.  
Stewart. *Fol. Dic. v. 3. p. 53. Fac. Col. No 231. p. 359.*

No 188.

The apprehending of an insolvent debtor without imprisonment, or taking into custody, held to be insufficient to qualify the statutory bankruptcy.

1789. January 14.

JAMES RICHMOND and Others *against* TRUSTEES of CHARLES DALRYMPLE.

AN assignation by a debtor, in favour of the Trustees of Dalrymple, one of his creditors, was brought under reduction by Richmond and others of his creditors, as having been executed within 60 days of his bankruptcy, contrary to the statute of 1696, cap. 5.

No 189.

Other proof of a bankrupt's imprisonment in