

No 9. debt, authenticated in some degree by proper evidence; whereas here the incarceration proceeded upon a claim, unsupported by proof, illiquid in its nature, and so extensive in its consequences, as to intimidate every friend of the defender from interposing in his behalf. *Secondly*, Proof is required, either from circumstances, or at least by the arrester's oath, that the debtor means to fly the country for debt; and on this principle, according to Lord Stair, b. 4. tit. 47. § 23. the power of judges in granting these warrants is limited to the case where the debtor meditates an escape from justice. Here no such design is imputed to the defender. His acknowledgment amounts to this, that having no prospect of employment in this country he intends to take the first opportunity of departing for America, in the prosecution of his ordinary profession.

Answered for Gammell; To prevent suits from becoming elusory, it is now part of the common law of Scotland, that a person having a claim against another who is about to leave the kingdom, where he has no tangible funds, may apply in the manner which has been adopted. To require evidence of the debt to justify such application, would in most instances entirely frustrate the ends proposed by it. It is therefore sufficient for the party, to make oath, that a claim exists, and that he thinks it well founded; a criterion which the defender in this case has not thought it necessary to demand. The second branch of the defender's argument is quite inconsistent with the nature of arrestments of this kind. The decision of a judge must be equally ineffectual, from whatever cause the party against whom it is pronounced departs from the territory in which he is sued. Hence Mr Erskine, b. 1. tit. 2. § 21. properly explains the expression on which a critical argument is attempted by the defender, as including every case where the debtor means to leave the kingdom. In this case the defender's admissions superseded the necessity of proof on this point.

THE LORDS had no doubt of the propriety of the Sheriff's judgment, but to accommodate the defender as much as possible, they allowed him to find caution for his appearance six months after requisition by the pursuer.

Lord Ordinary, *Brasfield*. Act. *Ilay Campbell*. Alt. Mat. *Ross*. Clerk, *Campbell*.
Fol. Dic. v. 3. p. 400. Fac. Col. No 27. p. 48.

1786. January 16. GAVIN KEMPT *against* His CREDITORS.

No 10.
A *meditatione fugæ* warrant may be put in execution at any time.

GAVIN KEMPT, as being *in meditatione fugæ*, was committed to prison, by a Magistrate, on an application of his Creditors. He afterwards presented a bill of suspension and liberation, in which it was argued, that the arrest, having taken place on a Sunday, was illegal.

The cause was reported by the Lord Ordinary on the bills; when

The Court were unanimously of opinion, That as the imprisonment was founded on an alleged intention to defraud creditors, by flying to another country, it might proceed at any time.

No 10.

The Lord Ordinary, after advising with the Lords, refused the bill.

Fol. Dic. v. 3. p. 401. Fac. Col. No 246. p. 378.

1787. February 10. PARK and BROWN against BENNET.

PARK and BROWN made oath before the bailie of the abbey, that their debtor Bennet had retired to the sanctuary, merely to have a better opportunity of flying the kingdom. Bennet refusing to find security for his remaining in Scotland, was committed to the abbey jail, and upon application of the creditors on the ground of that jail being insufficient, warrant was granted by the Lords for removing him to the prison of Canongate.

No 11.

Fol. Dic. v. 3. p. 401. Fac. Col.

* * * This case is No. 7. p. 7. *voce* ABBEY of HOLYROODHOUSE.

1789. December 20.

PATRICK LAING against JAMES WATSON and JOHN MOLLISON.

PATRICK LAING insisted in an action of wrongous imprisonment and of damages against James Watson, a creditor of his, and against John Mollison, the Provost of the borough of Brechin, and one of the Justices of the Peace in the county of Forfar.

It appeared that Patrick Laing was in bankrupt circumstances, and had disposed of most of his effects in the borough of Brechin, with a view of removing to another part of the country, though there was no reason to suspect that he meant to quit Scotland; and that James Watson applied to Mr Mollison for a warrant to imprison Laing, stating that he was *in meditatione fugæ*, and intended soon to leave the kingdom, at least that part of it; and with regard to this James Watson made oath.

It farther appeared, that the desire of the petition was granted, without taking the oath of Watson as to the amount of the debt, without any previous examination of Laing, and without any litimation as to the time within which any action was to be commenced against him. Laing was confined to prison for several months; no proper measures however were taken by him, for some time, in order to obtain his release; and it even appeared, that he was inclined to prolong his stay in prison, so as to increase as much as possible his claim of damages. The defenders

No 12.

A meditatione fugæ warrant was granted without taking the oath of the creditor on the amount of the debt, or examining the debtor. Damages were found due by the Magistrate and the creditor.