

1797. June 3.

HENRY BLACKFORD SCUDAMORE, and his Attornies, *against* EDMUND LECHMERE.

EDMUND LECHMERE, an Englishman, embarrassed in his circumstances, came to Scotland, and hired lodgings for a year, in the Abbey of Holyroodhouse, in order to have the benefit of the sanctuary, in case diligence should be done against him by his English creditors.

After he had been ten or eleven months there, a petition was presented to the Sheriff-depute of Edinburgh, in the name of Henry Blackford Scudamore, of the county of Somerset, and his attornies in Scotland, stating, that Mr Lechmere owed a large sum by bond and fitted account to Scudamore, and other two persons, who, along with him, were the joint assignees on the bankrupt estate of an Englishman, the original creditor of Mr Lechmere; that Mr Lechmere had left England, in order to avoid the diligence of his creditors, and that 'the petitioners have good reason to believe, and do verily believe, that he will likewise leave Scotland, in case any intimation or notice shall be given to him of the intention of the petitioners to proceed or pursue any steps against him for the recovery of the aforesaid debt.' The petitioners therefore prayed, that Lechmere should be imprisoned, till he should find caution *judicio sisti*, in any action for the debt to be brought against him within six months.

Along with the petition there were produced copies of the bond and fitted account, an affidavit by Scudamore before the Depute Mayor of Bath, in terms of the petition, and a mandate to his two attornies in Scotland, authorising either of them to apply for the warrant, and take what other steps they should think necessary for recovering the debt, for behoof of himself and the other joint assignees. This mandate was neither holograph, attested by witnesses, nor written on stamped paper.

One of the attornies made oath before the Sheriff, 'That the deponent is credibly informed, and believes in his conscience, that the within designed Edmund Lechmere is *in meditatione fugæ*, and about to leave Britain, in order to avoid payment of the debt mentioned in the petition.'

The Sheriff ordered Lechmere to be brought before him for examination.

Mr Lechmere having been accordingly apprehended without the precincts of the Abbey, he, in his declaration before the Sheriff, admitted the authenticity of the documents of debt produced, and the subsistence of the debt; but said he had good defences against payment of part of it, and denied any intention of leaving Scotland.

The Sheriff granted the warrant; 'but in respect of the magnitude and nicety of the case,' superseded the execution of it for a few days, that Mr Lechmere might, if so advised, apply to the Court of Session; and, in the mean time, authorised the officers of Court to keep him in safe custody.

A bill of advocation, with the whole proceedings, was ordered to be printed, and was reported by the Lord Ordinary on the Bills.

No 14.

A warrant may be issued at the instance of one foreigner against another, as *in meditatione fugæ*, but not unless the Judge be satisfied that there are reasonable grounds for the application.

No 14.

Mr Lechmere *objected* to the title of the petitioners, That the mandate was not probative, nor on stamped paper; and that one of the joint assignees could not act without consent of the rest.

It was *answered*, That in practice a more formal mandate was not required; and that any one assignee might take the steps necessary for securing the debt.

Mr Lechmere further

Pleaded, A warrant against a party, as *in meditatione fugæ*, is not competent at the instance of one foreigner against another for debts contracted abroad; 6th December 1775, Scot against Carmichael, No. 16. p. 2057.

Besides, the party applying ought, in addition to his oath, that he believes the debtor means to leave the kingdom, to exhibit some reasonable grounds for his suspicion; 20th December 1789, Laing against Watson and Molison; No. 12. p. 8555; and none such have been offered in the present case.

Answered, There seems no good ground for a distinction in this particular in favour of foreigners. Indeed, the law in some degree considers foreigners to be always *in meditatione fugæ*, and, therefore, in the Admiralty Court, caution is required from them not only *judicio sisti*, but *judicatum solvi*. In this case, the whole circumstances support the oath.

A great majority of the COURT thought the preliminary objections ill founded.

On the remaining points it was

Observed on the Bench, The Court were much divided in opinion in the case of Scot against Carmichael, which, at any rate, from the period Mr Lechmere has resided in this country, was very different from the present. But as a warrant of this sort is an extraordinary remedy, it ought in no case to be granted *nisi causa cognita*. By this, however, it is not meant, that the Judge, before granting it, ought to allow a proof of the opposite averments of parties; but that the creditor, in addition to his oath of credulity, should state some probable reason for suspecting that the debtor means to leave the kingdom; and the question is, whether any such appears in the present case?

A majority of the Judges thought, that as Mr Lechmere had come to Scotland, to have the benefit of the sanctuary, where he had hired lodgings by the year, there was no reason to suppose he meant to deprive himself of that benefit by leaving the kingdom.

THE LORDS remitted to the Lord Ordinary, to remit to the Sheriff, "with instructions to set the advocator at liberty."

Lord Ordinary, *Cullen*.

For Scudamore, *Hope*.

Alt. *H. Erskine*.

D. D.

Fac. Col. No 33. p. 76.

* * * There is at present (Summer Session 1804) in dependence a case, *TASKER against MERCER*, relative to this subject, of which the report shall appear in the Appendix.

See PRISONER.

See CAUTIO JUDICIO SISTI.

See APPENDIX.