attach to it in the hands of an onerous indorsee.' Lord Benholme concurred, stating his opinion to be that a master could not go the length of raising a debt lawfully contracted by him, and for which his owners were liable, to the rank of a bill debt, excluding all inquiry. If this be the law, it is *luce clarius* that the pursuers in the present instance cannot be liable either to the drawer or the payees in re-exchange or bills which should never have been drawn upon them, and which they were not bound to accept."

The pursuers advocated.

LORD ADVOCATE and SHAND for advocators.

CLARK and MACLEAN for respondents.

The Court affirmed the judgment of the Sheriff.

Agents for Advocators—Morton, Whitehead, & Greig, W.S.

Agents for Respondents—J. & R. D. Ross, W.S.

Friday, January 22.

FIRST DIVISION.

CITY OF GLASGOW UNION RAILWAY CO. *v.* HUNTER.

Railway—Lands Clauses Act—Compensation—Verdict of Jury—Reduction—Injuriously Affecting. When part of a proprietor's land is taken by a railway company, the jury, in settling the amount of compensation under the "Lands Clauses Act," are entitled, besides giving the value of the land taken, to give damages for injury affecting the remaining portion of the land, arising through the execution of the railway works, whether such injury is done directly from the works on the lands taken from the proprietor himself, or from works on land taken from a neighbouring proprietor.

Question, as to claim by a proprietor no part of whose land is taken by the railway company?

Injury to land by railway works, under the Lands Clauses Act, does not imply a wrongful Act, but is to be understood in the ordinary sense of the word.

A verdict of a jury in a compensation case under the Lands Clauses Act will not be interfered with unless plainly incompetent.

The defender was owner of a property in Glasgow, part of which fronted Eglinton Street. Part of his property, to the back, was taken by the pursuers under statutory powers. The question of compensation was sent to a jury, in terms of the "Lands Clauses Consolidation (Scotland) Act 1845." The defender claimed compensation (1) for the value of the property to the back, taken by the defenders; and (2) for the damage done to his remaining property through the construction of a bridge spanning Eglinton Street and adjoining his property fronting that street.

The jury returned this verdict—

"The jury unanimously find the pursuer entitled to the following sums, viz.:—

For the property to be taken, .	£1205	4	0
For old materials thereon, .	65	0	0
	£1270	4	0
For the compulsory purchase, thereof, at 10 per cent, .	127	0	0
Carried forward,	£1397	4	0
Brought forward,	£1397	4	0
Less value of the feu-duty at 20 years' purchase, . . .	639	0	0
	£758	4	0
For damage to the pursuer's remaining property caused by noise of trains, railway bridge across the street, smoke, and general nuisance and deterioration of the tenement next the railway, . .	392	0	0
	£1150	4	0

In all, One thousand one hundred and fifty pounds four shillings sterling; but the jury find no damage done to the pursuer's gable next the railway."

The pursuers sought in this action to reduce the verdict, alleging "The said verdict was *ultra vires* of the jury, inept, and null, in so far as (1*st*) the jury awarded to the defender, in addition to the price of the subjects taken as for the compulsory purchase thereof, a sum of 10 per cent upon the value of the feu-duty with which the subjects were burdened. The value of said property was £639. This feu-duty did not belong to the defender, but to the superior of the said property, and was a burden upon the defender's interest therein. The said verdict was further *ultra vires* of the jury, in so far as (2*d*) the jury awarded to the defender compensation in name of damage to the defender's remaining property caused by noise of trains, railway bridge across the street, smoke, and general nuisance, and deterioration of the tenement next the railway. The jury had no power under the Act of Parliament under which the inquiry took place to give damages on any such grounds."

The Lord Ordinary (MURE) pronounced this interlocutor:—"Finds that the verdict sought to be reduced was *ultra vires* and inept, in so far as it awarded to the defender a rate of compulsory purchase at 10 per cent. upon the value of the feu-duty with which the subjects in question were burdened, and which feu-duty did not belong to the defender: Therefore sustains the reasons of reduction to the extent of the sum of £63, 18s., being the amount of the said per centage; and to that extent reduces and declares in terms of the conclusions of the summons; and finds that the defender is not entitled to inforce the said verdict and interlocutor following thereupon, except under deduction of the said sum of £63, 18s.: *Quoad ultra*, repels the reasons of reduction: assoilzies the defender from the conclusions of the action, and decerns: Finds the defender entitled to expenses, subject to modification," &c.

"*Note*—The Lord Ordinary has not felt much difficulty in dealing with the first objection taken to the verdict in the present case, because, *ex facie* of the verdict, there appears to have been a miscarriage on the part of a jury in giving 10 per cent. of compulsory purchase upon the amount at which they valued the feu-duty with which the subjects in question were burdened, and the value of which ought, it is thought, to have been deducted from the gross sum of £1270, 4s. before the compulsory purchase of 10 per cent. was added to it, instead of after that had been done. The Lord Ordinary has therefore felt himself called upon to reduce the verdict to the extent of that excess, which seems to be pointed at as a competent course by the Lord Chancellor in the case of the *Caledonian Railway*

Company v. *Ogilvy*, 30th March 1856, 2 Macqueen, p. 243.

"The *second* question raisd is attended with more difficulty; but, after examination of the authorities, the Lord Ordinary is come to be of opinion that the present case is distinguishable from that of *Ogilvie* (2 Macph. 229), and of *Ricket* v. *The Metropolitan Railway Company*, May 16, 1867 (2 L. R. App. 175) relied on by the pursuers; and that the question here raised falls within the rules given effect to in the case of *Brand*, February 1, 1867, 2 Law Reports, Queen's Bench, p. 223, and other cases referred to by the defenders.

"By the branch of the verdict to which this objection applies, the jury have found 'for damage to the pursuer's (the present defender's) remaining property, caused by noise of trains, railway bridge across the street, smoke, and general nuisance, and deterioration of the tenement next the railway, £392.' This tenement, though not purchased by the pursuers, was part of the same feu as the back tenement taken by them for the purposes of the railway, and upon a portion of which the railway was to be constructed. The jury have therefore found in substance that the remaining property was, to that extent, injuriously affected by the construction of the works; and this they were, it is thought, entitled to do under the words of section 48 of the Lands Clauses Act, 8 & 9 Victoria, cap. 19, and section 6th of the Railway Clauses Act, 8 & 9 Victoria, cap. 33, provided the items of damage so awarded were of a description which could relevantly be made the ground of a claim of compensation by a proprietor against a railway company under the Statute. On the part of the pursuers it was argued, that these items, and in particular that caused by the erection of the railway bridge across the street, could not relevantly be so claimed, inasmuch as the bridge was not built on property belonging to the defender, and did not injure him in any different way from that in which it might be supposed to injure other properties in the neighbourhood, and that the case fell therefore within the principle of the rule in the case of *Ogilvy*.

"But there is, it is thought, a plain distinction between the two cases. In the case of *Ogilvy*, what was claimed was in reality damage for personal inconvenience arising from a level crossing over a public road, which the proprietor and his family had frequently to pass. It was, however, held in the House of Lords, that as that was not a special injury to the property of Mr Ogilvy, but only an inconvenience to which the proprietor was exposed with the rest of her Majesty's subjects, it could not competently be made the foundation of a claim for compensation for damage to property as injuriously affected by the execution of the railway works. But in the present case the remaining property, which is the tenement next to the railway, has been found to be itself injuriously affected, and, among other things, by the bridge across the street. This bridge, as alleged by the pursuers on the Record, the defender maintained to the jury would obscure the light of the adjoining shops and premises, while the noise and smoke of the trains would, from the close vicinity of the railway, also injure those shops and the neighbouring dwelling-houses; and upon the evidence the jury have found that this would be the case. The damage found due, therefore, is not assessed by reason of matter personal to the proprietor, as in the case of *Ogilvy*, but the property itself has been found to be damaged by the execution of the works, and one of the items of damage claimed, viz., that of 'obstructing the light,' which, it may be presumed, the jury had in view with reference to the effect of the bridge, as it is alleged to have been specially put before them, is a species of damage which is expressly mentioned by Lord Cranworth in giving his opinion in the case of *Ricket* v. *The Metropolitan Railway Company*, as one that could competently be claimed.

"But obstruction to light was held to be a relevant item of damage in the case of *Brand*, 1st February 1867, founded on by the defenders, and was there caused by the construction of a viaduct near the party's house, though no part of the property appears to have been taken or entered upon by the railway; and in that same case, 'vibration, noise, and smoke' of trains in the close vicinity of a house was also sustained. In the case of *Eagle* v. *Charing Cross Railway*, June 18, 1867, Law Reports, II. C. P., p. 638, diminution of light was again held to be an injurious affecting which entitled the proprietor to compensation; and in the latest case, that of *Becket* v. *The Midland Railway Company*, 2d March 1868, Law Reports, C. P., vol. iii., p. 82, the obstruction to light by the narrowing of a road and erecting of an embankment on the opposite side from the property injured, was also held to be a relevant ground for claiming compensation.

"These decisions appear to the Lord Ordinary to proceed upon a sound construction of the statute, and, as they are expressly supported by the opinion of Lord Cranworth in the case of *Ricket* v. *The Metropolitan Railway Company* as to such an item of damage as that arising from obstruction to light, he has deemed it right to give effect to them by repelling the reasons of reduction in regard to this branch of the verdict."

Both parties reclaimed.

CLARK and JOHNSTONE for Railway Company.

GIFFORD and MACDONALD for Hunter.

At advising—

LORD PRESIDENT—There are two questions raised here—one by each of the reclaiming notes—and they are undoubtedly questions of considerable importance on the construction of the Lands Clauses Act. The first question is whether it appears on the face of the verdict that the jury have given compensation or damages for something for which the owner of this urban tenement was not entitled to compensation, and that depends on the meaning we attach to certain words in the last part of the verdict, where the jury gave a sum "for damage to the pursuer's remaining property, caused by noise of trains, railway bridge across the street, smoke, and general nuisance, and deterioration of the tenement next the railway." If this is to be read, as at first sight it might be, as giving damages to a certain extent for the interruption of th defenders' access along Eglinton Street, which is crossed by the railway, then it might have been difficult to sustain that part of the verdict, for that would have been very near the judgment of the House of Lords in the case of *Ogilvy*. But I am satisfied that that is not the true construction of this part of the verdict.

This was a case in which the railway company took part of the defender's property, described as the back portion of his tenement; but they left his front tenement, leaving him therefore the more valuable part. His claim, therefore, took this form—so much for the value of the land taken, and so much for

damage to the remaining property which was not taken. It appears to me that, by their verdict, the jury meant only to express the value of the damage they considered was caused to the remaining part of the defender's property by reason of the execution of the railway works, and the question is whether, in doing so, they acted in conformity with the provision of the Land Clauses Act, or exceeded their powers.

By the 17th section of the Land Clauses Act, the Railway Company are directed to give notice to the landowners that they are willing to treat for the purchase of their lands, "and as to compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works." Again, in the 19th section, it is provided that if the landowner shall fail to state the particulars of his claim, or treat with the promoters, or if the parties shall not agree on the compensation for the owner's interest in the lands "or for any damage that may be sustained by him by reason of the execution of the works," the amount shall be settled as after provided. Again in the 48th section, the jury are directed as follows:—

"Where such inquiry shall relate to the value of lands to be purchased, and also the compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict by a majority of their number, separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, such party is entitled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the land, by reason of severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the power of this or the special act, or any act incorporated therewith: provided always that if the parties agree to dispense with such separation, the verdict may be returned for one sum."

It appears to me that, under these provisions, a jury acting in such a case are entitled in the first place to fix the value of the land taken, and in the second place to give damages to the proprietor of the land for any injury affecting his remaining property that can be ascribed to the execution of the railway works, and it makes no difference whether that injury occurs directly from the portion of the railway works on the land taken from him or from the portion of the railway works on the land of his neighbour. There has now been twenty or thirty years' experience in such valuations, and I venture to say that such a distinction as is now contended for was never heard of in practice. It is said, indeed, that when a railway company acquires the land of my neighbour they are vested with all the powers which the former owner had, and if they do nothing he could not have done without subjecting himself in damages, they are not liable either. I demur to that doctrine, although it has received the countenance of some very learned persons, for I think it is clearly against the true construction of the Act of Parliament. I agree with Lord Westbury, who says (*Ricket v. Metropolitan Railway Company*, 2 L. R. App. 175), that the word "injuriously affected" means nothing more than injury in the popular sense; not "wrongfully" in the sense of unlawfully, but "damnously," *i.e.*, injuriously in the ordinary sense of the word. The railway bridge mentioned in the part of the verdict with which we are now dealing is, no doubt, across the street, but if that bridge stretching across the street has injuriously affected this property of the defender, either by diminishing the amount of light or otherwise, I apprehend it was within the power of the jury to give damage for that, although the bridge is across the public property. The reason why, in *Ogilvy*, a level crossing was held a bad ground for claiming compensation, was that the only injury that level crossing could do to the claimant was in obstructing his use of the public road, but that is not the kind of injury contemplated here by the jury, which is injury to the property by the mere proximity of that erection, which may, in some cases, be very serious. I therefore think that this part of the interlocutor is sound.

But as to the other part of the case, I think the Lord Ordinary has gone wrong. It is, no doubt, not a very accurate way of stating the figures to which the jury have resorted. It would have been more satisfactory, more logical, and I think I may say more rational, if the jury had first ascertained precisely the value which the subject had in the market; in other words, had they made up their minds what it would sell for as in a voluntary sale and purchase, and then added to that the per centage which they thought reasonable in respect of it being a compulsory purchase. What they have done is, they have taken the gross value of the property, without deducting the feu-duty, and have added a certain per centage. But have we any means of knowing that, if they had taken another way, and had first deducted the thirty years' feu-duty, they would have taken only 10 per cent. for compulsory purchase, or whether they might not have added 20 per cent.? All that is beyond our knowledge, and we are not entitled to interfere unless something illegal was done—something given to the land-owner which it was illegal to give. I am not satisfied that that is so here. I cannot say that they have taken a way which is either incompetent or illegal, if, instead of taking 20 per cent. on the actual value they have taken 10 per cent. on the total value without deducting the feu-duty. I am, therefore, for recalling that part of the Lord Ordinary's interlocutor which deals with this point.

Lord Deas—The important question here is the right of the jury to give compensation for injury caused to the defender's property by the railway bridge. Now, I read that as compensation for the railway bridge which has been built across the street, and not as compensation for its crossing the street. It is the same, therefore, as if the jury had said for damage to the defender's remaining property caused by the railway bridge. So reading the verdict, it is plain that these damages might be caused to the property by the bridge in a variety of ways, affecting the light or the air of the property, and so on. And if there be any way in which it may have injuriously affected the property, and caused damage to the defender's remaining property, that would justify the jury in putting some value on it. I don't think it is a test of illegality in a case of this sort, where a part of a man's property is taken by a railway company, simply to say that something might have been done by some one else who would not have been

liable in damages. It would be a test if it could be said that the injury done by this bridge was an injury which was common to all the public. If the injury was common to the whole community it would not entitle the proprietor to damages, although he suffered in a greater degree than any of his neighbours. That is the case of a railway crossing a public road, which is an injury to every one, but does not found a claim of damages. The case of a railway bridge is quite different from that of a level crossing, and I agree in holding that the jury were quite entitled to give the damages found by their verdict.

The other question is more perplexing, It does not appear clearly on the face of the verdict in what way the jury arrived at their verdict. Probably they took what they thought was the simplest method. But that is not very material, for they have arrived at a result, and have awarded a sum to the defender. That is all we know with certainty, and it would be very inexpedient to interfere with the verdict because the jury possibly, or even probably, went wrong. It must be clear that they went wrong, otherwise there would be an end to that finality which is the great benefit of these statutory proceedings.

Lord Ardmillan—Both these questions are attended with some difficulty. I think it is important to observe that this is an action of reduction of a verdict, and it is therefore very inexpedient and very unusual to interfere with it except on clear grounds. Before touching the verdict we must find it necessary to read it in such a way as to support the pursuer's plea.

The proceedings here were for the purpose of fixing the compensation due for damage done in the construction of the railway works. It is important to bear in mind that the compensation which the railway company is bound to pay for damage done in respect of property injuriously affected is not the result of any unlawful proceeding. It is necessary to keep that in view, for they are acting under statutory powers, the liability for compensation being imposed by the statute; not that they are doing wrong for exceeding their powers, but because their powers are given to them with the qualification that they shall give compensation. I quite agree with Lord Westbury in his observations on the meaning of the word "injuriously." "Injuriously" must be read in connection with the fact that the railway company are acting under powers which make it competent and lawful to do the act causing damage. I give no opinion on the case where the party asking compensation has no part of his own property taken by the railway company. There are decisions which might lead to the conclusion that in England such a claim might competently be made; but I do not go into that question, for here the proprietor of the land has had a part of it taken by the railway company, and I think he is clearly entitled to damages for that part of his property which is left.

On the other point in the case I have still more difficulty. I rather think that it looks very like a mistake on the part of the jury, and if I were sure that it was a mistake, that would be a reason for not allowing the verdict to stand. But we have no means of knowing with certainty that it was a mistake, and therefore I am disposed to concur with your Lordships.

Lord Kinloch—I have arrived at the same result with your Lordships.

On the point raised by the reclaiming note for the Railway Company, we are very much relieved from the difficulties which would otherwise lie in our way, by the circumstance that this is the case of a party, a portion of whose land has been taken by the Railway Company, and who now insists in a claim of damage for injury to that portion of the same ground which has been left to him. If there had been nothing before us but a claim of damages for injury to ground untaken by the company, there would have been more difficulty; although there are English authorities to the effect that even there a claim would lie. Such a claim has much support from equity; but I would feel considerable difficulty in giving effect to it, consistently with the provisions of the Lands Clauses Consolidation Act. I desire, however, to pronounce no opinion now on the point.

In the case before us that difficulty does not occur. This is the case of a party a portion of whose land has been taken, and therefore he comes under the express terms of the Lands Clauses Act, which gives him a claim to compensation, not only for the ground purchased, but also "for the damage, if any, to be sustained by the owner of the lands, by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands, by the exercise of the powers of this or the special act." It is not said in this clause that the damage is to be simply such as would entitle the party to a claim against the original owner of the adjacent ground. It is not merely said that all his common law claims are reserved—which I take to be the effect of the argument offered to us by the pursuers—he is declared unlimitedly entitled to compensation for all damage to his remaining lands so far as injuriously affected by exercise of the powers given by the Railway Acts.

The question, therefore, is simply whether the damages awarded in the present case do or do not fall under this description of damages specified in the statute? Does the verdict give compensation for damages to the remaining portion of the defender's lands in consequence of their being injuriously affected by the erection of the railway? I have no doubt on the point. The different items of damage, as given in the verdict, are all of them such as may be fairly said to be items of damage so arising. For it must be always remembered that the damage due is damage not merely from the original construction, but from the permanent existence of the railway. The case is quite distinct from that in which damages are claimed for interference with a public road. In the latter case the damage sustained by one individual is not different in kind, although it may differ in degree, from that sustained by the public at large, and there is no claim for compensation. A public right, taken away, or diminished by a public statute, cannot infer a claim of damages to any one. We are not entitled to suppose that, in referring to the bridge across the street, the jury were giving damages for interference with the passage along the public street, when we see that the bridge was calculated to produce so much of other damage legitimately awarded. We cannot assume that the jury have done what they were not entitled to do. We must hold that the damage given under this head of the verdict did not go beyond what, under the various heads stated in the verdict, was authorised by the terms of the statute.

As to the other point, I agree with your Lordships in holding that the Lord-Ordinary's inter-

locutor should be altered. It is said that the Jury made a mistake, and that they could not well have intended to do what they did. I cannot concur in that view. What they did was to take the price which the property might be supposed to bring in the market, irrespectively of the feu-duty,—to add 10 per cent to this amount on account of compulsory sale,—and then to convert the feu-duty into a capital sum of deduction, allotting the balance to the owner. Now, supposing that the Jury might have adopted a more strictly correct mode of procedure, there is nothing, as appears to me, incompetent in what they did; and the question, as must be remembered, is not whether the verdict is such as we ourselves would have given, but whether the jury have done something clearly beyond their powers. I do not think that this has been made out. There is no rule of law on the subject of this allowance for compulsory sale. It was left to the discretion of the jury to fix it in such a way as they might think right, and they might do so in various ways. They might fix it at a slump sum, without a per centage at all. They might take a per centage on the nett sum, after deducting the feu-duty, and fix such amount of per centage as they pleased. In reality, they took the per centage on the gross sum before the feu-duty was deducted. But for anything we know, had they taken it on the nett, and not the gross sum, they would just have made the per centage so much larger as to come to the same result. We cannot interfere with the verdict on a matter in regard to which the jury were acting within their competency. Whether they were right or wrong in the view adopted is not a question before us, and is indeed a question on which we could not probably pronounce satisfactorily without much more information than we can possibly have.

I am therefore of opinion that on this point the interlocutor of the Lord Ordinary is erroneous.

Agents for Pursuers—Murray, Beith & Murray, W.S.

Agents for Defender—Campbell & Smith, S.S.C.

Saturday, January 23.

MUIR *v.* HILL AND KEDDELL.

Expenses — Dismissal of Action—Caution—Bankruptcy—Absconding. An incidental decree for a sum of expenses being pronounced against a pursuer, and he being charged thereon, and thereafter execution of search being returned bearing that he was not to be found in his house in Scotland, "he having absconded to England to prevent said warrant being executed"—motion by defenders to have the action dismissed, or the pursuer ordained to find caution, *refused.*

Muir, resident in Glasgow, brought an action of reduction of a decree-arbitral against Hill and Keddell, contractors, carrying on business in the county of Middlesex, and quarriers in the island of Mull. A proof being appointed for the 9th July 1868, on that day the Lord Ordinary, in respect of the absence of certain witnesses and havers for the pursuer, discharged the order for proof appointed for that day, appointed the proof to be led on a future day, and found the pursuer liable in expenses so far as unavailable by reason of the postponement of the proof. On 17th July the Lord Ordinary decerned against the pursuer for the sum of £27, 18s. 8d., being the taxed amount of the defender's expenses. The decree was extracted, and on 9th September the pursuer was charged thereon. On expiry of the charge, warrant of search and apprehension was granted. Execution of search was returned, bearing that the messenger had searched Muir's dwelling-house, "but notwithstanding of the most strict, diligent and minute search in and through said dwelling-house, he, Muir, could not be found, neither could he be found in Glasgow at any time since the 13th day of November last, during which time said warrant has always been in my possession, he having absconded to England previously to prevent said warrant being executed; his wife also stating that he, Muir, had not been in Glasgow for more than six weeks, and that he had gone to England." The defenders then, on 2d January 1869, moved the Lord Ordinary to have the action dismissed, with expenses; or, failing a decree to that effect, that the pursuer be ordained to find caution for expenses, in respect of his failure to pay the expenses found due by the interlocutor of 9th July, and contained in the decree of 17th July, and dues of extract, and of the pursuer being a notour bankrupt under said decree, and an execution of search produced.

The Lord Ordinary refused the motion, and the defenders reclaimed. After the reclaiming note was put out for hearing in the summar roll of Saturday 23d, the defenders, on Wednesday 20th, were offered payment of the sum in the decree, which offer they refused, on the ground that they were entitled to payment likewise of subsequent expenses.

At the hearing,

CLARK and KEIR, for reclaimers, cited *Samuel*, 6 D. 1259, and *Wight*, 12 S. 535.

SCOTT for respondent.

LORD PRESIDENT—I don't see sufficient reason for altering the Lord Ordinary's interlocutor, apart from the tender of expenses made since the date of the reclaiming note. The question which the Lord Ordinary had to determine was a somewhat delicate one, as all such questions are. It is always a very strong measure to ordain a party to find caution for expenses, or submit to have his action dismissed at once, and it is only done on very sufficient grounds. If a pursuer is totally divested of his estate after coming into Court, by sequestration or otherwise, that is a sufficient reason for making him find caution as a condition of being allowed to follow out his suit. But that is because, in ordinary actions for recovery of money, he is no more *in titulo* to sue. His claim has passed to his trustee; and though, if the trustee will not take up the claim, that may give the bankrupt a right to pursue it for his own behoof, yet the fact that the trustee refuses to take up the claim is a *prima facie* presumption that the claim is unsound. Therefore, in several such cases the bankrupt has been ordered to find caution. But I am not sure that mere bankruptcy has ever been found a sufficient ground for ordaining a bankrupt to find caution. *Samuel* was a very peculiar case. There the bankrupt, being under ultimate diligence, went to the sanctuary, and remained there, and set his creditors at defiance. And therefore the Court, in respect it was admitted that Samuel was presently within the sanctuary, ordained him to find caution within eight days. But the circumstances here are not the same. This man goes to England with this decree against him, and that is the whole state of facts on which the Court are asked to proceed. The execution only