heir: no, not with the consent of the heir; *that* was the case of *Landales*. As to the case of the heir of entail, it is rightly put by Lord Coalston, because an heir of entail is a fiar absolute, though limited by clauses: when he departs from the entail, there is no more but a ground of reduction. There is a certain distinction between grounds of reductions and grounds of nullity.

PITFOUR. I cannot call back the judgment of this Court. The distinction was thin, but still there was a distinction.

JUSTICE-CLERK. The Court found the infeftment erroneous, and properly; but, in effect, that resolves into a nullity: the precept is no title on which prescription could begin to run, for it gave the liferent to one who was fiar, and the fee to one who had no right at all. After the long course of time during which this right has remained, without challenge, I would support the diligence for the accumulated sums and penalty.

KAIMES. I cannot go so far in support of the adjudication: it was deduced not against a feudal debtor, but against an apparent heir.

HAILES. I have the same difficulty: How can we give such effects to an adjudication which we must, however unwillingly, find to be intrinsically erroneous?

KENNET. The word erroneous was put into the interlocutor, that the separate defence of prescription might remain entire. The case of *Landales* does not apply; *there* there was a *titulus habilis ad transferendum dominium*, but no prescription. Here the title is erroneous, and would always have continued so: besides, if it were a title for positive prescription, yet here another and a proper title was made up within the 40 years.

On the 27th January 1774, "The Lords restricted the right of the defender to principal sum, interest, and necessary expenses, accumulated at the date of the adjudication;" varying Lord Kaimes's interlocutor.

Act. R. M'Queen. *Alt.* A. Wight, A. Lockhart.

1772. *August* 11. DOCTOR ANDREW HERON *against* CAPTAIN WILLIAM DICKSON.

MEDITATIO FUGÆ.

[*Faculty Collection, VI.* 248; *Dictionary,* 8550.]

HAILES. If a man may be thus summarily arrested upon no other evidence but the oath of the supposed creditor, without production of the ground of debt, we are in no better situation than the English are, by whose law a man may be imprisoned for debt where there is no debt.

AUCHINLECK. Although the grounds of debt were not produced at first, they are produced now; which comes to the same thing. The only caution asked is *judicio sisti.*

PITFOUR. This is an improper use of the diligence of the law.

GARDENSTON. This extraordinary diligence, contrary to the common course of law, is not to be justified except upon clear grounds. I do not think the oath sufficient, when the debtor was only here occasionally. The expression, *meditatio fugæ*, points out what the law means. It is also of consequence that the ground of debt is not produced; not that the complainer is thereby hurt, but because of the handle for oppression this may afford. Diligence is never granted without production of the grounds of debt: Why admit that in an extraordinary diligence, which you would not admit in an ordinary?

AUCHINLECK. The tenor of the oath removes my difficulty.

PRESIDENT. Of the same opinion; but thinks that a summary warrant may be granted, although the grounds of debt are not instantly produced.

COALSTON. I doubt whether the remedy of a summary warrant does not apply, although the debtor have a personal estate and even a *real* within our jurisdiction. My difficulty is from the form of the oath.

On the 11th August 1772, "The Lords passed the bill of liberation, without caution or consignation."

Act. A. Lockhart. *Alt* P. Murray.

Reporter, Kaimes.

1773. *December* 14.—COALSTON. There is a distinction between one who has a residence in Scotland and one who has not. In the *first* case, evidence must be given of a *meditatio fugæ*; in the *second* not. There is no occasion for an oath. In the Admiral Court, from a like necessity, the practice has been to begin with apprehending the party. The decision in the case of *Herris* proceeded on the same principles.

PITFOUR. When a man has a land estate, he has a domicile, and there is no occasion for this extraordinary diligence.

JUSTICE-CLERK. I would not encourage what is called *nimious diligence*; but I will not condemn an honest creditor, acting under a trust, in his attempts to recover a just debt. *Here* there was nothing *nimious* or oppressive in the diligence. Surely Dr Heron could have no difficulty in finding caution *judicio sisti.*

MONBODDO. Dr Heron had a residence in this country, but it was a residence *fictione juris*: in such circumstances, I would not punish a trustee for doing personal diligence.

GARDENSTON. If a man is imprisoned illegally, damages are due, no matter what was the motive for his imprisonment. The only question here is, Whether the warrant was legal. I think it was. I approve of Lord Coalston's distinction: the warrant here is exactly similar to a border warrant. There is no oath necessary; all that is required is, to say that the party is a foreigner: his having a domicile by having an estate in Scotland, signifies nothing: that does not make him less a foreigner.

ALVA. Extraordinary remedies ought to take place only in extraordinary cases. A man who has an heritable estate in Scotland, is amenable to our Courts without this summary warrant.

KAIMES. If a foreigner comes into this country, his creditor may say, You are a foreigner, and you must find security to remain where you are. The

only difficulty in this case is, that Dr Heron has the appearance of a land estate in this country. I do not think that this is enough to bar an extraordinary application: the creditor is not bound to take the whole circuit of the law, in order to operate payment. In some cases, *tutius est personæ adhærere quam rei.*

On the 14th December 1773, "The Lords assoilyied."

Act. A. Lockhart. *Alt.* P. Murray.

Reporter, Stonefield.

Diss. Pitfour, Alva.

1774. *January* 28.—COALSTON. The distinction is well established between one having a residence in Scotland and one not.

PITFOUR. I would be of the same opinion, were it not that Dr Heron has a land estate.

JUSTICE-CLERK. The caution required was not severe, it was only *judicio sisti*: when there is a suspicion of a *meditatio fugæ*, the arrestment will be good, although there is a land estate. Dr Heron must be considered as a stranger, because his residence was in London: there was no oppressive intent here, but a laudable purpose of doing the duty of an executor.

AUCHINLECK. I do not like a man who tries to shake himself loose of a debt by a complaint of this kind.

On the 28th January 1774, "The Lords assoilyied Captain Dickson;" adhering to their former interlocutor.

Act. A. Lockhart. *Alt.* P. Murray.

1774. *January* 28. ISOBEL WRIGHT *against* MESSRS ANDERSON and LAURIE.

ARRESTMENT.

Case where Arrestment laid on the same day, at different parties' instance, one execution bearing between the hours of five and six, and another execution bearing between the hours of five and seven, were preferred *pari passu*, on account of special circumstances, and particularly that of one messenger having served the whole arrestments.

[*Fac. Coll. VI.* 272; *Dict.* 823.]

PITFOUR. When we go to examine minutes and hours, there must be a demonstrative priority: without that, arrestments must come in *pari passu.*

HAILES. The conjecture of the Ordinary is certainly right. The messenger first arrested in Edinburgh, then in Leith, and then again in Edinburgh: no reason can be assigned for his having arrested at Leith at different times: his execution does not say so.