No 183. to allow it to take effect againſt any, but thoſe who fall under the literal deſcription of the ſtatute; Snodgraſs and Haldane againſt the Truſtees of Beat's creditors, November 13. 1744, No 174. p. 1095.

The judgment of the Houſe of Lords, in the caſe of Woodſtone, was undoubtedly an extenſion of the ſtatute, and there is no reaſon for extending that caſe to others which are not preciſely ſimilar. The two caſes, however, are extremely different; for there Woodſtone was not only apprehended, but he remained in cuſtody during the remainder of that day, as alſo during the whole of the night, and part of the next day. His being confined ſo long in the cuſtody of the meſſenger was underſtood, by the Houſe of Lords, as equal to an actual impriſonment; his being confined through the whole of the night, during which time no tranſaction appears, nor can be preſumed to have been going on, might be, with a good deal of reaſon, conſidered in the light of an actual impriſonment. But that is very different from the preſent caſe, where it would appear, from the proof, that Knowles was not above half an hour in the cuſtody of one of the meſſengers, nor above an hour at moſt in the cuſtody of the other; and, as for the reſt of the time deponed to, it muſt have been conſumed in drinking, as is always the caſe on ſuch occaſions, after the buſineſs is over.

Answered: It cannot ſurely be expected, that the Court will now go back upon a queſtion which has received the ſolemn determination of the Supreme Court, and has been underſtood, ever ſince that time, to be indiſputable. The act 1696 does not ſay that the bankrupt muſt be within the walls of a priſon. The word *imprisonment* is another word for being in cuſtody, and is put on the ſame footing with retiring, flying, abſconding, or forcibly defending. An execution of ſearch is undoubtedly ſufficient to bring a bankrupt under the ſtatute; and it would be unreaſonable if actual cuſtody, in conſequence of ultimate diligence, ſhould not have the ſame effect.

The Court were clear to adhere to the deciſion of the Houſe of Lords, in the caſe of Woodſtone, as eſtabliſhing a rule that ought to be permanent, and not arbitrary; and that, for the ſame reaſon, there was no room for going into a diſtinction, as to the time or number of hours of a bankrupt's being in the meſſenger's cuſtody; and, therefore, pronounced the interlocutor following:

'Find ſufficient evidence, that, at the time of granting the diſpoſition challenged, Francis Knowles was bankrupt, in terms of the act 1696.'

Act. *Ilay Campbell.* Alt. *M'Queen.* Clerk, *Tait.*

Fol. Dic. v. 3. p. 53. Fac. Col. No 121. p. 326.

No 184. An execution of ſearch found to afford, *per se*,

1775. *July* 4. The CARRON COMPANY, *against* JAMES BERRIE and Others.

JAMES BERRIE and others, creditors of James Wright, merchant in Glaſgow, having, in the courſe of a competition, taken exceptions to an heritable ſecurity

in the form of a wadſet, granted by him in favour of the Carron Company, upon the footing of the act of 1696, as having been granted within 60 days of Wright's being notour bankrupt in terms of that ſtatute; the Lord Ordinary, after hearing parties, pronounced the following interlocutor: 'Finds the execution of the 'ſearch is ſufficient evidence of Wright's abſconding from the diligence of his 'creditors; therefore prefers the ſaid James Berrie, and the other creditors men-'tioned in the intereſts produced for them.'

No 184. ſufficient evidence of abſconding, unleſs redargued by proof of very pregnant circumſtances of a contrary tendency.

In a reclaiming bill, on the part of the Carron Company, it was inſiſted, that the execution of the ſearch produced was not ſufficient evidence to bring Wright within the deſcription of a notour bankrupt in terms of the act 1696: That the purpoſe of the act would indeed be ſadly defective, if an execution ſuch as the preſent, (in many inſtances colluſive, and a mere ſham, as in fact it was in this very caſe), were to be held as ſufficient evidence of a debtor's abſconding from diligence: That he did not abſcond, in the proper ſenſe of the word: That there was no ſtop in carrying on his buſineſs: That the Carron Company, in particular, dealt with him afterwards, furniſhed him with goods, and received payments, never dreaming that they were all the while correſponding with a perſon notour bankrupt, and rendered incapable by law of granting any valid ſecurity.

'The Lords, before adviſing the petition with anſwers, allowed the reſpondents, the ſaid James Berrie and others, to prove that James Wright abſconded from the diligence of the law, and all facts and circumſtances material for proving the ſame; and allowed the Carron Company to prove that Wright continued his buſineſs without interruption at the time, and after the date of the ſearch produced, and did not abſcond from the diligence of the law.'

But the proof, when reported, not appearing ſuch as to detract from the meſſenger's returned execution, but rather tending to confirm it; while the burden of the proof in this caſe undoubtedly lay chiefly upon the party who ſought to redargue it: After adviſing the proof, with the petition and anſwers,

'The Court adhered to the Lord Ordinary's interlocutor.'

Act. *Blair.* Alt. *B. W. M'Leod.* Clerk, *Roſs.*

Fol. Dic. v. 3. *p.* 54. *Fac. Col. No* 176. *p.* 92.

1782. *June* 25. ALEXANDER ROSS *againſt* JAMES CHALMERS.

No 185. Found, in conformity with Carron Company againſt Berrie, *ſupra.*

LEARMONTH indorſed ſundry bills to Chalmers, in ſecurity of a prior debt, and ſoon after ſtopped payment. On the ſixtieth day poſterior to the indorſation, a meſſenger, poſſeſſed of letters of caption, ſearched the bankrupt's houſe between the hours of eleven and twelve at night, in order to apprehend and incarcerate him, though without ſucceſs.

A proof offered, that the debtor had left his houſe, not to avoid diligence, but to

An action, for ſetting aſide the indorſations above mentioned, was brought by Mr Roſs, as truſtee for Learmonth's creditors; in which the queſtion occur-