

1785. July 14. ROBERT FLEMING *against* PATRICK CAMPBELL.

BANKRUPT—STATUTE 12 GEO. III, C. 72.

The Court refused, under section 15 of the statute, to grant warrant for apprehending the agent of the bankrupt, in order to his being examined; they merely “*appointed* him to appear, and, on his failing to appear, granted warrant to apprehend him.”

By the 15 § of the late Act of Parliament, concerning insolvent debtors, it is provided that the Court of Session shall, on the application of the factor on the bankrupt’s estate, grant warrant for *apprehending and bringing before the judge*, who is to take their examination, the bankrupt, or any of his family, or others who are to be examined.

Robert Fleming, factor on the estate of John M’Donald, set furth, by incidental petition, that Patrick Campbell, writer in Greenock, was agent for Mac-Donald in 1782, and is said to have been intrusted by him with a considerable sum of money for the purpose of paying certain debts; and the petitioner prayed the Court to grant warrant for *apprehending* and bringing Patrick Campbell before the Sheriff of Lanark, or his substitute, in order to his being examined, &c.

The Lords observed that the statute spake of a warrant to *apprehend*; but they considered that if the statute were literally interpreted, and an order made for apprehending any man without so much as desiring him to appear, great hurt would be done to the credit of individuals; and, at the same time, no benefit would accrue to the creditors of the bankrupt: and, in particular, they considered that the summary apprehending of Campbell, a man in business, without cause shown, would ruin his reputation in the eyes of the public; and therefore they resolved to explain the statute so as to make it *rational*: and they “*appointed* P. Campbell to appear; and, on his failing to appear, they granted warrant to apprehend him.”

For the petitioner, B. W. M’Leod.

*N.B.* The clause which occasioned the difficulty, and obliged the Court to qualify the warrant for *apprehending*, is one of the many crude and ill-devised clauses in that wretched statute.

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