

BRAXFIELD. A decret of furthcoming is a legal transfer. It would be hard to make the arrester produce the grounds of debt: it very often happens that he cannot do it; and it may happen that he has not a right to do it. For example, that debt in which he has an interest, may be no more than fifty pounds out of a bond for a thousand: Why find caution when a man has a clear right?

ESK GROVE. When the debtor does not object, judgment passes in a furthcoming, all parties being in the field; *that* is a sufficient security, and the arrestee is in safety to pay.

On the 4th August 1785, "The Lords repelled the defences, and decerned;" altering the interlocutor of Lord Alva.

Act. Al. Elphinston. *Alt.* Adam Rolland.

1785. *November 17.* GEORGE MAXWELL and OTHERS, CREDITORS of EBENEZER M'GEORGE, *against* Mr ADAM GIB, Minister.

BANKRUPT.

Act 1696. The apprehending of an Insolvent Debtor, without imprisonment or taking into custody, insufficient to qualify the statutory Bankruptcy.

[*Fac. Coll. IX. 359; Dict. 1113.*]

ESK GROVE. The only question here is as to the Act 1696. And what is required by that act? It is a correctory law, and a strong one, and so must not be extended by interpretation. *Here* there is no apprehending. I doubt whether, if actual imprisonment followed, payment of the debt would be sufficient to put a man out of the Act 1696.

PRESIDENT. The case of *Udston* was different from the present one, for *there* the debtor was detained for thirty-six hours. The case of *Lord Hopeton* is misunderstood.

BRAXFIELD. The question is not as to the effect of paying the debt after incarceration. But, were it good law that such payment would take a man out of the Act 1696, the consequence would be, that, a creditor for L.20 having imprisoned his debtor and brought him under the act, another creditor for L.1000, whose debt fell within the provisions of the act, would enable the debtor to pay the L.20, and so make place for his own debt.

On the 17th November 1785, "The Lords sustained the defences."

Act. Robert Corbet. *Alt.* H. Erskine.

Reporter, Alva.