

1771. July 26. ANDREW FERGUSSON *against* JAMES SMITH and OTHERS.

## BANKRUPT.

Evidence of Absconding.

[*Woodhouslee's Dict. III. 54; Morrison's Dict. 1,109.*]

PRESIDENT. I doubt whether a search implies *absconding*, and whether *insolvency* must be presumed without proof.

GARDENSTON. In the case of one *Stewart* from Perth, a search was found to be evidence of absconding.

COALSTON. It is a good evidence, *prima facie*, but may be redargued. As to insolvency, the defenders have taken from the debtor all his goods they could find, and offer a proof of other effects.

On the 26th July 1771, the Lords "found that the debtor fell under the Act 1696;" adhering to Lord Barjarg's interlocutor.

*Act. A. Rolland. Alt. D. Armstrong.*

1771. July 30. PATRICK GRAHAM and OTHERS *against* SIR ROBERT POLLOCK.

## CLERK OF SESSION.

Security of the Clerks of Session over papers produced in Process, for payment of their Fees.

[*Facts in Supp. V., 416.*]

COALSTON. By the constitution of this Court the clerks have only dues of office, no salaries. Although processes are transacted, they have still right to dues. For this end they have two means, retention of the pieces, and a claim of payment against each party for one half. The claim is for trouble, and that claim lies, although no writings are produced to found an hypothec.

PRESIDENT. I doubt as to some of these principles: the hypothec is total. If one of the parties becomes bankrupt, are the clerks to have only one-half of their dues?