

joined with insolvency, is not sufficient to constitute him a bankrupt, in terms of the act 1696. No 181.

For Elliot, *Wight*.

Alt. *Crosbie*.

*Fac. Col. No 66. p. 306.*

*G. Ferguson.*

1771.

FERGUSON *against* SMITH.

No 182.

FOUND that where a debtor's insolvency is notorious, and he is under diligence by horning and caption, a fruitless search following on the caption, at his usual place of residence, is sufficient evidence of his having absconded. See No 179. p. 1104.

*Fol. Dic. v. 3. p. 54.*

1774. July 5.

ALEXANDER FRASER *against* GEORGE MONRO.

No 183.

THE question which here occurred was, Whether a person (Francis Knowles) who had granted a disposition in favour of one of the parties, of date 5th November 1766, which was now challenged by the other, as falling under the sanction of the statute 1696, was, at the time of granting, within the description of the aforesaid statute?

This case decided in conformity with the judgment of the House of Lords in No 178. p. 1102.

Upon this point, the pursuer condescended upon hornings and captions that had been issued against Knowles; and he offered to prove that Knowles was, about the same period, and within sixty days of the disposition, apprehended by messengers, and taken into custody by them; and although he was not actually imprisoned, yet the foresaid circumstances ought to be held as equivalent, to the effect of rendering him bankrupt, in terms of the statute 1696, agreeably to what was found by the House of Lords, in the case of the Creditors of Woodstone *contra* Colonel Scot, No 178. p. 1102.

A proof was accordingly brought, which amounted to this, That Knowles had been apprehended upon a caption upon the 17th October 1766; and remained with the messenger in a public-house for about the space of two hours, until a bond of presentation was made out; and, upon another occasion, having been apprehended, had remained in a public-house with the messenger for about three or four hours, at which time the whole debt was paid up, except about L. 3 Sterling; and the question came to be, Whether these circumstances were sufficient to bring him under the description of the statute?

*Pleaded* for the defender: As the criteria of bankruptcy are expressly pointed out in the statute, so, in constructing this statute, productive of so strong and extraordinary effects, the Court have been in use to admit of no equivalents, or