

No 185.  
visit his wife,  
was held, al-  
though it  
should be  
made out, not  
sufficient to  
redargue the  
execution.

red, whether this execution of search was *per se* complete evidence of the bankrupt's having absconded, in terms of the statute 1696.

*Pleaded* for the defender: The mere absence of a debtor from his house, when a messenger intended to have executed a caption against him, cannot establish this legal qualification of bankruptcy. It is, at the utmost, only a circumstance tending to support such an allegation, and may be elided by proof, that it did not proceed from any purpose of avoiding the diligence of creditors. Hence the practice in questions of this kind has been, to allow a proof of collateral circumstances, upon the result of which the decision is understood to depend. This method was followed in the cases of Finlay *contra* Aitchison and Moffat, No 180. p. 1106. and of James Berrie and others *contra* the Carron Company, No 184. p. 1110. : And, in the present instance, the defender offers to prove, that the common debtor left his house that day on which his house was searched, for the purpose of visiting his wife, who at that time resided with her father.

*Answered* for the pursuer: The intention of absconding being an act of the mind, is only capable of proof from external circumstances. When, therefore, the debtor's insolvency is notorious, and he is under diligence by horning and caption, a search, following on the caption, at his usual place of residence, must afford legal evidence of this qualification of notour bankruptcy. Accordingly the general scope of the decisions upon this point has been, to hold this circumstance as sufficient; Mudie *contra* Dickson, No 179. p. 1104. ; Fergusson *contra* Smith, No 182. p. 1109. Nor can the force of this evidence be removed, by the defender's proving, that the debtor's absence arose from different causes, which might be alleged in every case, and would in a great measure frustrate the purposes of the act.

THE LORDS seemed to be of opinion, That the execution of search was of itself conclusive evidence of the debtor's having absconded, and could not be redargued by the proof here offered. They therefore

' Sustained the reasons of reduction.'

Reporter, Lord Stonefield. A&S. Mat. Ross. Alt. Maclaurin. Clerk, Menzies.  
Craigie. Fol. Dic. v. 3. p. 54. Fac. Col. No 49. p. 78.

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1783. July 4. EDWARD YOUNG *against* JOHN GRIEVE and Others.

No 186.

IN this case, the circumstances of a debtor's not being found in his dwelling-house by a messenger ready to execute a caption against him, and of his family not giving information whither he had betaken himself, were construed to be such an absconding as is founded on, in the act of 1696.

Lord Ordinary, Westhall. A&S. Maclaurin. Alt. Henry Erskine. Clerk, Campbell.  
Stewart. Fol. Dic. v. 3. p. 54. Fac. Col. No 111. p. 175.