if they did not thereby interfere with the rights of others. The circumstance that in attending to the supreme interest of navigation the Commissioners lost sight of the salmon-fishing interests is of no moment. The leading object of the Commissioners is to provide for navigation, and that they had to consider first of all; but as proprietors of salmon-fishings they also represented the interests of the public; their revenues are to be applied to the furtherance of navigation, and the rents of the salmon-fishings are as much public property as the harbour rents.

[*After narrating the nature of the operations carried out by the Commissioners on the north bank, his Lordship continued*]—Now, when they found the bank too steep I cannot doubt that they were entitled to alter it so as to obtain more convenient shots. How they did this is utterly immaterial; the result is that the deepest part of the river is thrown into the centre of the channel instead of being immediately below the north bank. The complainers say that what the respondents have done or are doing injures their upper fishings by obstructing the passage of salmon, and, if that statement were well founded, they are entitled to what they ask. But what is an obstruction in the legal sense? An improvement in the means of fishing, by which the lower heritor increases the produce of his fishings, is no obstruction, unless there is something illegal or objectionable in the mode by which he effects it. There is in one sense no more fatal obstruction to the passage of a fish than catching it, because it certainly can go no further; but it is no legal obstruction if the lower heritor catches double what he did before, provided there is nothing objectionable in the mode by which he does so. There must be an obstruction that will prevent the passage of the fish that escape the lower heritor. Now, here there is nothing in the nature of a weir or fixed obstruction. The objection is that the depth has been diminished and that fish will be easily frightened. Assuming that to be well proved, which I think it is not, that is quite a visionary grievance. For these reasons I agree with the Lord Ordinary.

The Court adhered.

Counsel for Complainers — Trayner — Keir. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Respondents — Lord Advocate (Watson)—Kinnear. Agents—Morton, Neilson, & Smart, W.S.

Saturday, December 9.

FIRST DIVISION.

[Bill-Chamber.

M'DERMOTT *v.* RAMSAY.

Master and Servant—Apprentice—Meditatio fugæ—*Desertion.*

Held that it is a competent proceeding to apprehend as *in meditatione fugæ* an apprentice who has deserted his service with the intention of proceeding to America, and to imprison him till he find caution *de judicio sisti* in an action to have him ordained to return to his service and continue in it.

Process—Sheriff Court—39 and 40 Vict. cap. 70, sec. 6.

The form authorised by sec. 6 of the Act 39 and 40 Vict. cap. 70, is the proper form for all civil proceedings in the Sheriff Court.

The complainer M'Dermott, a lad of sixteen, was bound apprentice to the respondent Ramsay, a smith and cartwright, in July 1875, under a contract of indenture for five years. There was a penalty of £20 stipulated for non-performance. On 4th November 1876 he deserted his service, and took away his tools with him. Ramsay raised an action in the Sheriff Court by petition and condescendence, as provided by the 6th section of the Sheriff Courts Act of 1876, setting forth that he believed M'Dermott to be *in meditatione fugæ*, and that he was about to raise an action against the said M'Dermott, "founded upon the said contract of apprenticeship, to have the defender ordained to return to and continue in the service of the pursuer during the term of his apprenticeship, and to find caution to that effect, or otherwise to pay to the pursuer the penalty of £20 sterling," and praying the Court to grant warrant to apprehend the defender, to examine and commit him to prison till he should find caution *de judicio sisti.*

Warrant was granted, and the defender having been apprehended and examined, and thereafter committed to prison till he should find caution *de judicio sisti*, a note of suspension and liberation was brought before Lord Rutherfurd Clark, Lord Ordinary on the Bills. The Lord Ordinary passed the note, but refused to grant liberation *hoc statu.*

The complainer appealed, and argued—There is no authority for such a procedure. The proper course was under 38 and 39 Vict. cap. 90, sec. 6. It is not competent to apprehend on such a warrant where the action to be raised does not conclude for a sum of money. Besides, the procedure adopted here is not applicable. Summary procedure before any magistrate was, previous to the Sheriff Courts Act 1876, competent, and therefore that Act does not now regulate the form of procedure. If caution is to be found, the complainer's own bond should be sufficient—*Cameron* v. *Murray & Hepburn*, 8th March 1866, 4 Macph. 547 (Lord Deas' opinion).

The respondent argued—This case was peculiar, as the complainer here was anxious to leave the country. That intention would have made proceedings under 38 and 39 Vict. cap. 90, futile; it also made the complainer's bond of no avail. Any one who is under a civil obligation, be it *ad factum præstandum* or for a sum of money, may be arrested on such a warrant as this.

At advising—

Lord President—This is a kind of question in which one is extremely anxious to hear everything that can be said in favour of the apprentice, but I am sorry to say I can see no ground whatever for his liberation.

With regard to the objection to the form of proceedings, it is difficult to see on what that is founded. In the Sheriff Courts Act of last year one form is prescribed for the forms ordinarily in use previously, and it is intimated that this is to apply to every case whether it would have originated by summons or by petition under the old

forms The 6th section provides—"That every action in the ordinary Sheriff Court shall be commenced by a petition." In the interpretation clause the term "action" is defined to include "every civil proceeding competent in the ordinary Sheriff Court." Now, in the former procedure there were two classes of proceedings, the one beginning with a summons, called Actions, the other beginning with a petition, and called Summary Proceedings. The term "action" in this statute is made to include every case, and therefore this new form is applicable to this case as to every other.

With regard to the nature of the remedy adopted here, I see no reason why an application to apprehend a person *in meditatione fugæ* should be incompetent where the action proposed to be instituted against him is one *ad factum præstandum*. I see no reason, and I know of no authority, for holding that it is incompetent. The action to be brought here is for the fulfilment of the indenture entered into by the complainer. There will also, of course, be a conclusion for a penalty to the amount of the damage suffered by the master, but that does not alter the nature of the case, and therefore I see no reason for doubting that an application to imprison a person *in meditatione fugæ* to answer in an action of this kind is competent.

But one is unwilling to shut the door against the possibility of an arrangement, and after what Mr Alison has told us of the proposals made by the master, I venture to suggest to your Lordships that the case should be allowed to stand over for a week.

LORDS DEAS, MURE, and SHAND concurred.

Counsel for Complainer—M'Kechnie. Agents—Walls & Sutherland, S.S.C.

Counsel for Respondent—Alison. Agents—Adamson & Gulland, W.S.

Tuesday, December 12.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

DALZELL *v.* DENNISTON AND OTHERS.

Bankrupt — Sale — Compromise — Bankruptcy Act 1856, *secs.* 115 *and* 176.

Under the 115th section of the Bankruptcy Act the approval of the Accountant in Bankruptcy and of a majority of the creditors in number and value is requisite before the heritable estate of the bankrupt can be sold by private bargain. Under the 176th section the trustee and commissioners have power to compromise questions arising relating to the estate.

A dispute having arisen between the trustee in a sequestration and a creditor claiming certain heritable property of the bankrupt, the trustee and commissioners, on condition that the latter should abandon his right to rank upon the estate, agreed to give up to him the heritage in question.

Held that there being here a *bona fide* dispute, the action of the trustee and commissioners amounted to a compromise competent under the 176th section, and not to a private sale of the property.

By missive offer of purchase addressed by Robert Dempster, mason and builder in Glasgow, and the pursuer Robert Bruce Dalzell, to Robert Denniston, merchant in Glasgow, dated 2d October 1862, and acceptance by Denniston of the same date, Dempster and Dalzell agreed to purchase from Denniston a steading of ground fronting Argyle, Main, and Holm Streets, Glasgow, containing 1580 square yards or thereby, at the price of £6500, the price to be converted into a yearly ground-rent at twenty years' purchase, to be allocated over buildings to be erected. Dempster and Dalzell agreed, *inter alia*, to make certain erections upon the steading of ground on receiving the advances therein specified, and further bound and obliged themselves to have the two tenements fronting Argyle Street erected and finished by the 1st day of July 1863, and the remaining tenements by 15th May 1864, it being declared that should they fail to erect any of these buildings or tenements within the specified time the said Robert Denniston should have the right to draw the surplus rents of the tenements then erected, under deduction of ground-rent, interest on first bonds, and expenses of collection, which he should apply towards compensation for the loss which he should sustain by their non-fulfilling the said agreement; and it was further agreed that should they make a stoppage during the course of the erection of any building for more than one month, unless from the state of the weather precluding building operations, then the whole buildings should immediately revert to and become the said Robert Denniston's property in consideration of his advances, and that he should have power without any legal process of law whatever to enter into possession and either finish the said buildings or sell them, as he might deem most advisable.

Dempster and Dalzell accordingly entered into possession, and having nearly completed the erection of certain tenements fronting Argyle Street, they obtained from Denniston and certain other gentlemen holding a title to it as trustees for him, a disposition of the part of the ground upon which these buildings stood amounting to 664 square yards. Subsequently the buildings were completed, and while they were being erected certain advances had been made by Denniston to Dempster and Dalzell, which were in part repaid out of the proceeds of a bond obtained by them over the property. In security of the balance remaining unpaid, they in 1863 recorveyed the ground and buildings to Denniston by an *ex facie* absolute disposition, Denniston at the same time granting a back-letter acknowledging the true nature of this transaction.

In the summer of 1863 Dempster and Dalzell began to erect additional tenements upon the remainder of the ground, their right to which stood upon the missive offer and acceptance already mentioned. They soon after became embarrassed in their circumstances, and the firm of which Dalzell was a partner, as well as the individual partners of it, was sequestrated in February 1864—Dempster's sequestration taking place in the following month. Denniston, who during the erection of this second set of buildings had made the temporary advances as stipulated for, after due notice to Dalzell's trustee, entered into pos-