

after the Ordinary had reported the bill, and, not knowing what had been said by the Lords, offered caution *judicio sisti*, which superseded the entering farther on the question as to the legality of the proceedings of the Justices; and accordingly the bill was passed on finding caution *judicio sisti*; but as the penalty was made much higher than the complainer had expected, no less than £.500 Sterling, and as he was unable to find caution for so great a sum, he remained in prison.

No. 11.

And now an application being made to the Lords, setting forth the circumstances of suspiscion of fraudulent bankruptcy, and craving a warrant to transmit the prisoners from the tolbooth of Glasgow to the tolbooth of Edinbrugh, a doubt was stirred how far such warrant could be granted on a summary complaint for fraudulent bankruptcy without a process. Some instances were indeed given, where the like had been granted, as in the case of Philip Peck, and that of Joseph Cave; but whether or not there were processes in these cases could not with certainty be said.

But be that as it will, here is a precedent for it; for the Lords, upon this application, “ granted warrant to transmit the prisoners to the tolbooth of Edinbrugh.

*Fol. Dic. v. 4. p. 309. Kilkerran, No. 2. p. 525.*

1784. June 8. ELIZABETH MONTGOMERY, Complainer.

Elizabeth Montgomery having, as factrix for her husband Niel M'Vicar, writer in Edinburgh, charged Robert and David Lusks, his tenants, for the tack-duty of £. 437 in money, and other prestations due and resting for some years bygone, and in time coming, &c. for which they were by their tack bound conjunctly and severally, they offered a bill of suspension thereof in common form; to which she made no opposition, being willing it should pass, that she might have a cautioner.

Accordingly the suspension was expedite, but without any cautioner farther than that the one became bound for the other; which, how soon Mrs. M'Vicar observed, she gave in a summary complaint against Charles Inglis, depute-clerk to the bills; the advising whereof, the Lords, upon the 12th February, 1745, superseded till the suspension should be discussed.

The suspension being now discussed, the letters found orderly proceeded, and the tenants, after ultimate diligence, unable to pay, the complaint was again renewed.

But the Lords “ Found the complaint not competent otherwise than by Ordinary action;” though some of them were of opinion, that it had been no heresy to have sustained the summary complaint.

*Fol. Dic. v. 4. p. 310. Kilkerran, No. 3. p. 526.*

No. 12.

Whether a summary complaint be competent against the clerk to the bills for expediting a suspension upon insufficient caution.