[16*th August* 1832.]

ELIZABETH REBECCA CROWDER or TURNLEY, Appellant.—*Sir C. Wetherell — Macniel.* No. 19.

ROBERT WATSON and GILBERT WATSON, Respondents.—*Lord Advocate (Jeffrey)—Dr. Lushington.*

Arrestment in Meditatione Fugæ. — A married woman was brought from England to Scotland on a criminal warrant, and tried for the crimes of housebreaking and robbery, of which she was acquitted—Held, 1. That she was liable to be immediately arrested on a meditatione fugæ warrant at the instance of the parties whose property had been stolen: 2. That it was competent to obtain a second warrant, after the first had been dismissed as irregular in form: 3. That it is sufficient ground for granting a warrant to apprehend as in meditatione fugæ, if the creditor depone to the verity of the debt, and his belief that the debtor meditates flight.

2D DIVISION.
Lord Fullerton.

IN the month of December 1830 the bank of Messrs. James and Robert Watson, bankers in Glasgow, was broken open, and a large amount of money was stolen. The appellant, whose usual place of residence was London, had been residing in Glasgow immediately prior to the robbery, and returned to London about the period it was discovered. Suspicion having attached to her as a participator in the robbery, a criminal warrant was obtained,

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and under it she was apprehended and sent for trial to Glasgow in September 1831, together with a person of the name of Heath. The jury returned a verdict of guilty against Heath, who was executed; but returned the following verdict against the appellant: —" Find that the panel, " Elizabeth Crowder or Turnley alias Allen, was in " the previous knowledge of the theft, but had no par- " ticipation therein." The appellant was immediately liberated, but on the next day was apprehended as in meditatione fugæ, on a warrant from the sheriff of Lanarkshire, obtained by the Messrs. Watson, and was, after some procedure, committed by the sheriff till she should find caution de judicio sisti. The appellant presented a bill of suspension and liberation, alleging certain irregularities, on advising which with answer Lord Cringletie passed the bill. In the meantime Messrs. Watson, to avoid any risk which might arise from irregularities, and before intelligence of the bill having been passed by Lord Cringletie could have reached Glasgow, lodged a letter with the keeper of the gaol, foregoing any procedure on the warrant. They had, however, obtained a second warrant from the sheriff, and this warrant they put in execution before the appellant left the gaol.

On being brought up for examination before the sheriff, the appellant declared, " she is advised that the " present proceedings are illegal, and she therefore " declines to answer all questions." Upon that the sheriff granted the usual warrant to imprison her until she should find caution de judicio sisti, and she was accordingly recommitted to prison. A second bill of suspension and liberation was immediately presented by

the appellant, which was reported by the Lord Ordinary to the Court, and refused.*

She then appealed.

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Appellant.—The principle of meditatio fugæ does not apply to a foreigner having no domicile in Scotland, and particularly where a foreigner is brought into Scotland by force, and contrary to his will. A foreigner is under protection of the Court, and can as little be subject to apprehension on civil process at the instance of private individuals as a party brought from the country under such warrant, who enjoys a protection till restored thereto. In the present case the respondents are barred from availing themselves of their second warrant, as the irregularity of the first was their own act; besides, the appellant has been proved to be a married woman, and so is not liable to any action for a civil debt.†

Respondents.—The legality of declaring foreigners as in meditatione fugæ has frequently been recognised by the Court. The crime for which the appellant was apprehended having been committed in Scotland has rendered her amenable to the tribunal of that country, and in default of her finding caution her creditors are entitled to the ordinary remedy of detaining her to answer their actions. The appellant was brought to Scotland by the public prosecutor, and although while actually in the hands of the Court she might not be liable to apprehension on a

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* 10 S. & D. 29.

† 2 Bell, 562, 3, 4, and cases there cited; ibid. 372; Stewart's Ans. p. 228; Urquhart, Dec. 17, 1679 (Morr. 19470); Archer, June 18, 1791 (Morr. 8894); Halyburton, July 21, 1709 (M. 2); Ersk. 1. 6. 24; Chalmers, Feb. 19, 1700 (Morr. 6083).

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civil process, still the moment she is liberated she becomes so. The appellant cannot be considered as a married woman, as the person represented to be her husband is a felon; and although she was a married woman, still she would be liable to the restitution of stolen property.*

LORD CHANCELLOR.—My Lords, this case arose under peculiar circumstances. The appellant, Mrs. Turnley, and her brother-in-law, William Heath, appear to have resided in Glasgow for several months previous to the robbery of the Glasgow bank, on which occasion property to a great amount was carried off. Heath and his sister-in-law were arrested and carried to trial; the brother-in-law was convicted and executed, and the sister acquitted, but with a special finding that she had a knowledge of the proceedings before the robbery, but was not guilty of participation, which was, in fact, a verdict of acquittal. She must to all intents and purposes, therefore, be said to be acquitted upon tha charge. In about forty hours after that acquittal she was arrested on a warrant issued by the sheriff, as being in meditatione fugæ, and she was called upon to give bail to answer to the action which the respondents were about to bring to recover the amount of the loss they had sustained by the robbery, there being reason, as they alleged, for believing that she was in possession, or had under her control, all or part of the

* Macgregor, July 1, 1828, 6 Shaw & D. 475; Tait, June 4, 1831, 9 Shaw & D. 680; Trotter, Dec. 7, 1830, 9 Sh. & D. 144; an Englishman v. Angelo, Jan. 22, 1564 (Morr. 4825); Arnold, Dec. 1683 (Morr. 4843); Ayrie, July 6, 1701 (Morr. 4826); Hardie, Jan. 4, 1759 (Morr. 4830); Heron, Dec. 16, 1773 (Morr. 8550); Dickie, Dec. 20, 1811 (F. C.), 2 Bell, 564.

money so stolen. Not finding bail she was incarcerated. It appears that that process was informal, as the party had not made oath to the debt, and that process was abandoned. After that, a fresh process was taken out, and she was again arrested on the sheriff's warrant, and was incarcerated. She applied to the Court of Session for her liberation, by way of bill of suspension; and her application led to the interlocutors refusing to liberate her, which interlocutors the appeal has brought under the consideration of your Lordships. As I am of opinion upon the whole that it will be the duty of your Lordships to affirm the judgment of the Court below, I shall not trouble your Lordships with detailing at length the reasons on which I hold that opinion; but in consequence of one part of the argument, which was very ably urged by both the learned counsel for the appellant (the other parties not appearing), and which has been most ably met in the case on your Lordships table prepared on the part of the respondent, I think it right to deny my concurrence to the proposition, that a person arrested under criminal process, and dealt with as a criminal, and criminally tried and acquitted, has the same protection in returning from the Court which a witness would have in attending, under the process of a Court, either a civil or criminal trial in this country; and I take the law in Scotland to be, at the very least, as narrow for the privilege as the law is here. Were I to reason upon it, I should say, that the law there is more narrow in respect of that privilege, and much more strict and close than the law of privilege here. In disposing of this case one way or the other, it is not necessary to go further, but I thought it fit to state thus much; for it appeared to be assumed in the argu-

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ment, that a person who had been tried and acquitted enjoyed the same protection in returning from the Court where he was acquitted, or the gaol from which he was liberated (supposing he was discharged by gaol delivery), which a witness did in returning from a Court where he was called upon to give his testimony. But whatever protection this party might have claimed, it is perfectly clear that the protection would not continue for so long a period as she appears to have remained after the acquittal in the neighbourhood of the place where she at first was imprisoned, and afterwards took her trial. That privilege, even if she had enjoyed it (which I conceive she did not), could not possibly be extended to the period of forty hours during which she remained there. It may be as well just to mention, that a case was heard in the Court of King's Bench in January last, in which it was decided by Lord Tenterden, and all the other judges there, that no such privilege as is here claimed existed in this country, but that the rule was in conformity with that which I have stated. Into the other points of the case it is unnecessary for me to go. It is sufficient to say, that I take the view, generally speaking, which has been taken in the Court below. I shall therefore humbly move your Lordships to affirm the interlocutors generally.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House and that the interlocutors complained of be and the same are hereby affirmed.

JOHN M'QUEEN — A. DOBIE, Solicitors.