

incumbent upon him to prove the fact, either directly, or at least by showing, that, under the eye of Mr Adams, Wilson was in use to hire out the vessel.

No 80.

*Fol. Dic. v. 4. p. 231. Sel. Dec. No 148. p. 204.*

1784. July 6.

JAMES STEWART *against* DUNCAN MACDONALD, HUGH CHISHOLM, and  
GEORGE BEAN.

JAMES STEWART being apprehended by Hugh Chisholm, a messenger, for a debt due to Duncan Macdonald, consigned the money in the hands of the magistrate, to whom he was presented for incarceration, and was set at liberty. A few hours after, he was again apprehended, on the former diligence, by Hugh Chisholm, in consequence of directions from George Bean, the agent for Mr Macdonald, the creditor, and thrown into prison, where he lay for several days.

No 81.  
A creditor  
not respon-  
sible for the  
misconduct of  
an agent or  
messenger in  
the execution  
diligence.

In an action of damages founded on these proceedings, the LORDS pronounced the following interlocutor:

“ Find, That the imprisonment after consignment was illegal and oppressive, and that George Bean the agent, and Hugh Chisholm the messenger, are conjunctly and severally liable in damages and expenses; but, in respect there is no evidence that the defender, Duncan Macdonald, was in any degree accessory to the imprisonment of the pursuer, therefore assoilzie him from the process.”

Lord Ordinary, *Braxfield.* Act. Solicitor-General Dundas, *W. Miller.*  
For the Creditor, *Lord Advocate Campbell, G. Buchan-Hepburn.*  
For the Agent and Messenger, *Mackintosh, H. Erskine, Honyman.*  
Clerk, *Home.*

*G.* *Fol. Dic. v. 4. p. 231. Fac. Col. No 146. p. 261.*

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S E C T. XII.

Servant dismissed between Terms.

1750. June 20.

RAE *against* The PARTNERS of the Glass-work Company at Leith, and MILNE,  
their Clerk and Cashier.

RAE brought an action in August 1748, before the Justices of the Peace, against the said James Milne, for a year's wages, as one of the teasers to the

No 82.  
Where a ser-  
vant is dis-  
missed be-  
tween terms,

No 82.  
how his da-  
mage to be  
estimated.

glass-work (which business is to serve and tease the fires) being 14s. per week, deducting two weeks paid, in respect he had, at the end of the said two weeks, been dismissed, although he had been hired by the said James Milne in the June preceding for a year. And after various proceedings, the Justices, upon the 9th February 1749, " Found it presumed, that the pursuer either was or might have been some way usefully employed for the fifty weeks he was out of service, during the time libelled; and found, that he could not be entitled to the same wages during that time that he might have been entitled to had he been at work; and therefore modified the wages to the half, and decerned for L. 17 : 10s. Sterling."

The pursuer presented a bill of advocation, which the ORDINARY " refused;" and the LORDS, on advising petition and answers, " adhered."

It is the common practice, in case of a servant's refusing to come home to his service, for the Justices of the Peace to decern him in double of his wages. Instances of masters refusing to admit a servant to enter, or turning him off without a fault, more rarely happen; but, should it happen, the servant seems to have much to say for more than his wages, as he must feed himself till he get other employment; nor is it clear that he is bound to seek other employment. But all cases of that kind must depend on circumstances; and such there were in this case not favourable for the pursuer, but which it is not thought necessary to state particularly.

*Fol. Dic. v. 4. p. 233. Kilkerran, (REPARATION.) No 8. p. 491.*

1790. November 17.

ROBERT PUNCHEON *against* The TRUSTEE for the CREDITORS of JAMES HAIG and COMPANY.

No 83.  
Upon a ma-  
ster's bank-  
ruptcy, the  
servant's  
claim for wa-  
ges is subject  
to deduction  
of what was o-  
therwise earn-  
ed by him.

PUNCHEON, in spring 1784, was hired for seven years as a machinist or engineer, by James Haig and Company, who carried on an extensive distillery. His salary, during the three last years of his engagement, was to be L. 150 *per annum*.

Haig and Company stopped payment in April 1788. Punccheon, however, remained unemployed till the month of September following, when he entered into a new service.

In the distribution of the effects which belonged to the bankrupts, Punccheon having made a claim for his salaries during the unexpired term, the trustee for the other creditors objected, and

*Pleaded*, Whatever the stipulated endurance of the agreement between a master and his servant may be, it is generally understood, that, in case of the disability of either of the parties to fulfil their engagements, the contract is at an end at the subsequent term. It is evidently just, that this should be the