

1710. July 27. LAMB *against* CLELAND.

No. 19.

The Lords found it unwarrantable in a messenger to commit one to prison by virtue of a caption for debt, after intimation of a sist upon a bill of suspension obtained by the pursuer, although he was in the messenger's hands, before the sist was intimated or procured.

Fol. Dic. v. 2. p. 414.

* * This case is No. 14. p. 1700. *voce* BONA ET MALA FIDES.

1743. February. ANDERSON *against* BEGBIE.

No. 20.
Purpose and
effect of pro-
testation.

Upon the 6th July, 1741, Begbie obtained a decree against Anderson before the Sheriff of Edinburgh. A bill of suspension was presented 14th July, and was passed without answers. Upon the 28th, Begbie occasionally hearing that his decree was suspended, put up his protestation in common form. Upon the 29th, the suspension was intimated to him under form of instrument, which bore the date of the suspension, but not the day of compearance. And though a protestation is not usual till the day of compearance be past, the charger was advised, that this intimation, silent as to the day of compearance, did not oblige him to withdraw his protestation. It continued in the minute-book, and no party appearing in behalf of the suspender to have it scored, he extracted the same after it was read in the minute-book.

The suspender entered a formal complaint of this proceeding as irregular, upon the following medium: "That, by constant practice, the day of compearance in a suspension is always fourteen days after the date of the letters; and therefore thought the day of compearance was not intimated to the charger, yet as the date of the letters was intimated to him, he must have known that the day of compearance could not be before the 28th, and upon that account was *in mala fide* to put up his protestation until that day was elapsed." This complaint, with the answers, were remitted to an Ordinary to inquire into the practice, and to report.

For want of precedents in this case, the debate was reported, with the opinion of several members of the Court. It was set forth for the suspender, that his letters of suspension bore a warrant for citing the charger to compear the 1st of November then next; superseding the decree, and execution thereof, till the 10th of the said month; and that though the intimation did not contain the day of compearance, yet that the charger was put *in mala fide* to enter his protestation before the day of compearance, because, knowing the suspension, it was his duty to inquire about the day of compearance, which he had access to do at the Signet. At least he could not put it up before the 29th July, because of the constant