

THE LORDS sustained the defence for the Magistrates.

No 122.

Reporter, *Lord Dun.*

Act. *Hamilton, sen.*

Alt. *Jo. Forbes.*

*Fol. Dic. v. 4. p. 141. Edgar, p. 73.*

1733. *February* JOSEPH HOME *against* the KEEPER of Tolbooth of Edinburgh.

No 123.

WHETHER a prisoner, who offers a *cessio bonorum* to the jailor, can notwithstanding be detained for the prison dues, or if the jailor is comprehended under the act of grace in common with other creditors, debated, but not determined.

*Fol. Dic. v. 2. p. 175.*

1734. *July 18.* HAY *against* the KEEPER of the Tolbooth of Edinburgh.

No 124.

A POOR prisoner having obtained an act of liberation upon his creditors refusing to aliment him, was notwithstanding detained by the jailor, upon pretence that his fees were not a debt that fell under the act of grace, and that he had a hypotheck upon the prisoner's person for payment of the same; the LORDS found, That the jailor must aliment or liberate.

*Fol. Dic. v. 2. p. 175.*

\* \* The like found, 3th January 1736, Rattray *against* Keeper of the Tolbooth of Edinburgh, and 13th December 1737, Hopkins *against* Cleland.

See APPENDIX.

1734. *July 24.* M<sup>c</sup>KENZIE *against* BLAIR.

No 125.

IN a question about aliment craved by an indigent prisoner from his creditor, it was *objected*, That he was already sufficiently alimented, by being on the Exchequer charity-roll for L. 15 Sterling yearly. *Answered*, This is *jus tertii* as to the creditor, who can plead no *jus quæsitum* upon that score; and were the prisoner craving to be set at liberty upon a *cessio bonorum*, it would not include the King's bounty. The defence was repelled. But upon an after-application, 20th November 1734, this interlocutor was altered, and the defence sustained.

*Fol. Dic. v. 2. p. 173.*

1736. *January 27.* THOMAS DOWIE *against* CROCKAT.

No 126.

AFTER intimation made to the creditors in terms of the act of grace, if the debtor be arrested in prison by another creditor during the running of the ten.