

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 hypothec 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^cKENZIE *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.

No 126. days, or after elapse thereof, there is no necessity of a new intimation to him; but in terms of the *penult* clause of the act, he must find instant security to aliment, otherwise the prisoner may be set at liberty.

Fol. Dic. v. 2. p. 174.

1738: February 21.

ROBERT GORDON *against* The MAGISTRATES OF EDINBURGH.

No 127.

In this case, the LORDS found, That a person liberated upon the act of grace might be recommitted for a debt contracted posterior to his liberation.

C. Home, No 88. p. 143.

1738. November 23.

M^cLESLEY, Petitioner.

No 128.

A PRISONER is only entitled to aliment when he is imprisoned for debts arising *ex contractu*; so the LORDS understood the words 'civil debts' in the act of Parliament, in opposition to debts arising *ex delicto*.

And therefore, where a party had, for a gross delinquency in the execution of a caption against his debtor, been decerned in a certain sum in name of damage and expense to the person injured, and ordained to be carried to prison, and there to remain till payment, he was 'Found not entitled to aliment; notwithstanding that this was not a penalty, properly so called, imposed for a crime, but a damage arising *ex delicto*, for which he was imprisoned.

Kilkerran, (PRISONER.) No 1. p. 430.

1754. January 5. ALEXANDER WILL *against* PATRICK URQUHART.

No 129.

A prisoner is not entitled to the benefit of the act of grace, who is imprisoned till he perform a palinode, and does not offer caution for performance.

PATRICK URQUHART obtained decret against Alexander Will before the Commissary of Aberdeen, decerning Alexander Will to pay him 50 merks Scots in name of damages and expenses for having defamed him; and also ordaining him to appear in the church of Fraserburgh to ask pardon, as is usual in such cases.

Alexander Will being charged with horning upon this decret, and incarcerated within the tolbooth of Stirling, he applied to the Magistrates for an aliment, in terms of the 32d act Parl. 1696, which they modified to 3s. 6d. Scots per day; and ordained Patrick Urquhart to pay the same under the usual certification.

Patrick Urquhart offered a bill of suspension of this sentence of the Magistrates; and *pleaded*, that the act of Parliament was only in favour of prisoners for civil debts, that is, such debts as arise *ex contractu* or *quasi contractu*, and