

Perth to another about 20 miles distant, without any apparent necessity. At last he was released by application to the Circuit Lords, and now insists in an action of wrongous imprisonment and oppression against the Sheriff and his fiscal. The Lords found, That, in respect there was here a signed information, this case did not fall under the Act 1701. Kilkerran was of opinion that there was no signed information necessary, and that a warrant expressing the cause of the commitment was sufficient.

Elchies thought, that, if there was an information, it ought to be signed, but doubted whether any information at all was required. But the majority seemed to be of opinion that an information, and a signed information, was necessary.

Drummore was even of opinion, that, in this case, there was properly no information; and that to order his fiscal to sign an information, was the same thing as if he had signed it himself. But the majority thought otherwise. However, they were almost all of opinion that this was a very dangerous practice of the Sheriff, and might open the way to abuses which, if not prevented, might in a great measure defeat the intention of the law. They thought that, in this case, the Sheriff ought first to have taken a precognition upon oath, which would have been the best and most legal information he could have had; and if he had been afraid that the guilty person might in the meantime make his escape, he should have ordered him to be brought before him for examination, (which he could easily have done, the person being present,) and, according as the facts came out, committed him or not.

They therefore sustained the process for oppression, and remitted to the Ordinary to inquire into the facts.

N.B.—They were likewise of opinion, that a Magistrate might commit without any information at all, if the crime consisted with his particular knowledge, as if he had seen it, provided that were expressed in the warrant for commitment.

1739. June 26.

M'KENZIE *against* TUACH.

[*Vide* C. Home, No. 122; Elch., No. 12, *Arrestment*.]

THE Lords found, That the money consigned was not arrestable for the debt of the reverser. Dissent. Elchies. They seemed to be of opinion, that in case the declarator did not proceed, that then the arrestment would be effectual; because, in that case, the money, without dispute, would belong to the consigner: But this was not decided, nor was it necessary.

N.B.—The arrestment, in this case, was laid on before the summons of declarator was raised.