

No. 6. 1739, Nov. 22. ROBIESON *against* MAJOR HAMILTON, &c.

THE Lords doubted much whether the imprisonment falls under the act 1701, which excepts pickery and thieving; and the pursuers did not insist upon it. But they found both liable to the pursuer for L.80 sterling of damages for the illegal and oppressive imprisonment and continuance thereof; and found Robieson *separatim* liable for L.50 sterling of damages for the cruel, inhuman, and barbarous usage of the pursuers during the imprisonment.

No. 7. 1742, July 1. SINCLAIR *against* SIR JAMES SINCLAIR.

THE Lords thought that this imprisonment though *in privato carcere*, the defender's own house, fell within the general words of the act 1701 anent wrongous imprisonment; but found that the statutory penalties were cut off by the triennial prescription mentioned in the act; and found that the pursuer was not thereby barred from recovering his damages through the loss of his limbs by the bad usages during his confinement, which they found proven, and taxed the damages to L.350 sterling. The first part is agreeable to the judgment against the same defender at the instance of Sutherland in 1737. (No. 4.)

No. 8. 1744, Nov. 22. KERR *against* ORR AND FULTON.

The note relative to this case is subjoined to the text.

No. 9. 1747, Dec. 3. JEAN SYMONDS *against* THE MAGISTRATES OF MONTROSE.

THIS was a process of oppression wrongous imprisonment and damages for imprisoning the pursuer nine days and then turning her out of town with tuck of drum. Upon advising the proof, it appeared that upon complaints of stealing out of the public malt barn, a search was made in many houses, and among the rest in this woman's house, by Bailie Ross and a town-officer now dead, who found a parcel of concealed barley and two pecks concealed malt. She condescended from whom she got them, but retracted as to the bear, and was contradicted as to the malt. Ross reported to the Magistrates, and the woman was brought before them, who did not contradict the report. Their declarations were taken in writing, but not signed by them as far as appeared to us, and the declarations were not preserved. Upon this she was committed to prison without any written warrant, and was asked if she would depart the town willingly, which she refused; upon which she was turned out as above, but without a written sentence. The chief evidence against the woman was Ross's oath, and Bailie Muirison, both made defenders in the cause. The great difficulty was, that there was no sentence, nor trial, nor writing. But we pretty unanimously sustained the defence.

END OF LORD ELCHIES'S NOTES

*Relative to the Cases in his Dictionary.*