found that the said Justice of Peace was liable in expenses and damages to the plaintiff. No 31.

Act. *Boswell.* Alt. ——— Clerk, *Robertson.*

Fol. Dic. v. 2. p. 341. Bruce, v. 1. No 79. p. 95.

1715. *February* 19. LD. FULLARTON *against* Earl of KILMARNOCK. No 32.

An unwarrantable decree being pronounced by the Justices of Peace, the LORDS nevertheless assoilzied them from the damages, but found the plaintiff liable for the same as *improbus litigator*.

Fol. Dic. v. 2. p. 341. Bruce.

*** This case is No 219. p. 7503. *voce* JURISDICTION.

1750. *January* 3. ANDERSON *against* ORMISTON and LORAIN.

No 33.
In a case of oppression, the Sheriff, as well as the pursuer and his doer, found liable in damages.

HODGSON and Ormiston in Company grocers in Newcastle being creditors in L. 74 Sterling to Thomas Anderson, travelling chapman, late in Coldingham, wrote to James Lorain, writer in Dunse, to do the needful for recovery of their debt.

Lorain applied to the Sheriff, setting forth, That his constituents were creditors aforesaid, and were likely to be disappointed of their payment, for that Anderson's shop had been lately broke, and several of his effects stolen: That they were credibly informed his affairs were in disorder, that he was embezzling what remained of his effects, and designed to fly the country, therefore praying warrant to sequestrate his effects. And, of the same date, the Sheriff, without making any inquiry into the truth of these averments, or for ought that appeared, having so much as the grounds of debt laid before him, granted warrant to sequestrate, inventory, and value Anderson's effects, and to lodge the same in the house of Robert Corsar in Coldingham, whom, with David Ballantyne, he appointed to inventory and value the goods, to be made forthcoming to the petitioners and other creditors of Anderson.

This warrant was forthwith put in execution, so far that the goods were carried from Anderson's shop and inventoried, but the rest of the warrant was neglected; the goods were not lodged in the house of Robert Corsar, but, on pretence that he was not at home, in the house of one Idington; neither were they valued, as by the warrant had been directed. This happened on the 30th January 1741; and, in the meantime, decree having been obtained at the instance of Hodgson and Ormiston for the L. 74, arrestments were laid in Idington's hands by them, and also by Renton another creditor.

No 33. On the 5th of February, a new petition was presented to the Sheriff, signed by Lorain in name of his constituents, praying to have the goods rouped and sold; and the Sheriff, by deliverance of the same date, did appoint them to be sold on the 12th, at the sight of two persons, and the roup to be intimated at the crosses of Dunse and Greenlaw, and the parish church doors of Eyemouth and Coldingham; which was also put in execution, so far that the goods were rouped, but no intimation was made at the church doors.

Upon this *species facti*, Anderson brought a process of oppression and damages, in 1742, against Home of Wedderburn, the Sheriff, and against Hodgson and Ormiston; and having first insisted against the Sheriff, the Ordinary, in 1744, "Found his granting warrant to sequestrate the pursuer's goods, on no other pretext than the assertion of Hodgson and Ormiston, or their doer, &c. was unwarrantable and illegal, &c. and therefore found him liable in the pursuer's damage and expense;' whereof the Sheriff never complained, having compounded the matter with the pursuer.

The pursuer came next to insist against Hodgson and Ormiston: And they having declined the jurisdiction, as not being subject to the courts of this country, the declinator was sustained for Hodgson; but Ormiston being a native of Scotland, the declinator was, as to him, repelled. *Vide* No 1. p. 4779, *voce* FORUM COMPETENS. And by this time, Lorain being also brought into the process by a new summons, the debate turned upon the points following:

1*mo*, How far Ormiston was at all liable, having given no other instruction to his doer, but to do the best for him, according to law. 2*do*, How far Lorain was liable, having taken no step but *auctore Prætore*. And, 3*tio*, Whether in the worst event, the pursuer's oath *in litem* could be admitted, when there was no violence pretended, in which case only oaths *in litem* are admitted, and when the process is recently pursued; or, whether the pursuer, alleging damage, must not rather prove it as he best can?

Upon report, it was the opinion of the Court, that both Ormiston and his doer were liable, as, in the construction of law, both had applied. Where one employs a messenger to execute a diligence, though he be confined to employ no other than messengers, he will yet be liable for damages incurred by the messenger's malversation, though not for penal consequences; *multo magis* must one be liable for the act of one employed to manage his affairs. 2*do*, As representing falsehoods to the Judge, at least facts whereof no evidence was offered, the embezzlement and *meditatio fugæ*. 3*tio*, As not observing the direction of the warrants. And with respect to the oath *in litem*, that if damage was due, there must be a method for ascertaining it, where, by the defender's act and deed, the ordinary mean of proof is rendered impracticable; and the method could be no other than the pursuer's oath, which is, not, properly speaking, in this case an oath *in litem*, but rather an oath in supplement; which is admitted in many cases, such as where one borrows and refuses to restore, and the like.

Accordingly, the LORDS "Found Jonathan Ormiston and James Lorain liable to the pursuer in damages, conjunctly and severally. But, before answer, as to allowing the pursuer his oath *in litem*, ordained the pursuer to give in a condescendence of the persons from whom he bought the goods, that were sequestrated by order of the Sheriff of Berwick, and what the prices of said goods were when bought." No 33.

Fol. Dic. v. 4. *p.* 232. *Kilkerran*, (REPARATION.) *No* 6. *p.* 489.

1789. *December* 20. LAING *against* WATSON. No 34.

A JUDGE, as well as a party, found liable in damages for granting a *meditatione fugæ* warrant on a groundless application.

Fol. Dic. v. 2. *p.* 232. *Fac. Col.*

*** This case is No 12. p. 8555. *voce* MEDITATIO FUGÆ.

SECT. VII.

Wrongous Imprisonment.—Deforcement.—Oppression and Damages.

November 22 1743, and *November* 2 1744.

BELL *against* MAXWEL Bailie of Wigton and Others.

No 35.
A person found entitled to damages, who, without any decree being taken against him, was summarily imprisoned for refusing to depone to the number of cattle carried out of the county, without paying the customary dues.

THE Town of Wigton pretending a right of exacting a toll of twopence per head upon all cattle carried out of the shire; and the tacksman of the toll being informed that Alexander Bell, servant to Fullarton of Fullarton, had bought some cows for his master's use, and carried them away by the Carrick-road, brought Bell, who happened, after some distance of time, to be occasionally at Wigton, summarily before James Maxwel, Bailie, when the customer alleged, he had carried a parcel of cows out of the shire, without paying the toll due to the town, and insisted that he ought to be ordained to depone upon the number. The Bailie accordingly ordained him to depone; and, upon his refusal, committed him to prison. After he had been some days in prison, a process was brought against him, wherein being held as confessed on the number contained in the libel, he was decerned in twopence per head.

Of this decree he obtained suspension, and also pursued a process of wrongous imprisonment against the Bailie and customer, &c. In discussing which processes, it being averred for Bell, that the town had never been in use to