

No 15. false notes, knowing them to be such, is to be remitted to the Justiciary; that matter will depend on circumstances.

Fol. Dic. v. 3. p. 177. Kilkerran, (DELINQUENCY.) No 10. p. 160.

No 16.

Forgery does not fall under the act 1701 as to the time for trial and bail.

1748. July 29.

STARK *against* BURNET.

WILLIAM BURNET prisoner in the tolbooth of Edinburgh, at the instance of James Stark, for the crime of forgery, having used letters of intimation in terms of the act 1701, the complainer applied by petition, craving, 'That notwithstanding said letters, he might be ordained to appear and take his trial against the — day of November next, and for that effect be detained in prison.' THE LORDS 'granted the desire of the petition, unless he should find bail for L. 50 Sterling for his appearance.'

That forgery does not fall under the act 1701 as to the time limited for commencing and finishing trial is certain, that being what the forms and time of sitting of the Court could not permit; and, as to bail, though forgery is in some cases capital, yet that depends on circumstances; for, in many cases, it amounts not to a capital punishment: Therefore, as it is of an ambiguous nature, bail is generally admitted, and rarely opposed, but is made higher or lower according to circumstances.

Fol. Dic. v. 3. p. 177. Kilkerran, (DELINQUENCY.) No 12. p. 161.

1751. November 6. & 14. JAMIESON and Others, *against* FORRESTER.

No 17.
Forgery and falsehood punished by the Court of Session.

IN the complaint, at the instance of John Jamieson and others, partners in the rope-manufactory at Leith, against John Forrester, as guilty of forging certain bills, which he had impignorated to them, in security of a debt he owed them; the fact came out to be of a very uncommon contrivance. He had indorsed to them six different bills; and, with respect to most of them, they were suspected to be altogether fictitious, drawn on and accepted by persons that never had a being; at least, he could bring no evidence that there were ever such persons. And the account he gave of the matter rendered that suspicion a certainty, which was, that they had accepted the bills for value; and the value was, his obligation to put effects in their hands when he should be required so to do; and, that though he had got their bills payable at a day long elapsed, he had neither seen nor heard of them since. But one of these bills was a plain forgery; it was drawn upon James Cock merchant in Crief. And such a man there was; but then the prisoner, sensible that this James Cock would improve it, *alleged* that this James Cock was not the person on whom the bill was drawn, but another who called himself James Cock merchant in Crief.

But as he could give no satisfying account who this other person was, it was, on the 6th of November, found, 'That this bill was false, feigned, counterfeit, and forged by the said John Forrester; and the other bills were found false and feigned; and the whole six bills reduced and improven, and decerned and declared to be void and null, and to make no faith in judgment.'

No 17.

And upon the 14th November, the LORDS having again resumed the consideration of the complaint, &c. 'Found the complainers entitled to their damages, amounting to L. 300 Sterling, and decerned therefor; and declared the said John Forrester *infamous*, incapable of bearing evidence in any action or suit, or of passing on any inquest or assize, or of bearing any public trust or office; and ordered and adjudged him to be carried back to prison, and there to remain till a day certain, when he was to be brought to the common pillory, thereon to stand bare-headed for a full hour, between twelve and one, with this inscription on his breast, *Infamous Forger, and falsifier of Writings*; and thereafter to be carried back to prison, there to remain till an occasion should offer of transporting him to one or other of his Majesty's plantations in America, to which he was banished for ever, with the usual certification in case he should return; and ordained the bills to be torn and cancelled in their presence, and the sentence to be recorded in the books of sederunt.'

This is a strong instance of not remitting to the Justiciary, notwithstanding forgery is found proved. Another like instance occurred in a late case, David Chalmer against John Stevenson of Dykes, and in Russell against Adie, anno 1729, *voce* JURISDICTION, that being a matter pretty arbitrary.

N. B. Although in most crimes, a pannel may lay his hand upon his mouth and plead to be assoilzied, unless his prosecutor prove his libel, there is this speciality in forgery, that a defender must support by evidence, the account he gives of the deed challenged. *Vide* L. 22. C. ad L. Corn. de Falsis.

Fol. Dic. v. 3. p. 177. Kilkerran, (DELINQUENCY.) No 14. p. 163.

1752. February 27. JAMES SMITH in Prison for Forgery, Petitioner.

As forgery is a crime, whereof the punishment is not always capital, the LORDS were in use, on application, to let the person out of prison on bail, for a greater or lesser sum, according to circumstances. And accordingly, in this case, Smith, who stood accused of forging certain deeds, which he made use of for extinguishing and compensating a debt of L. 80 Sterling due by him, was allowed to be liberate on his finding caution for L. 100 Sterling, being the debt, and L. 20 more.

Fol. Dic. v. 3. p. 177. Kilkerran, (DELINQUENCY.) No 16. p. 164.

No 18.
Prisoners for
forgery are
commonly
admitted to
bail.