

1752. *February 20.* FITZGERALD and EGAN *against* THOMAS BONTEIN.

THIS case is reported by *Elchies*, (*Forum Competens*, No. 4.) Lord KILKERRAN'S note of it is as follows:—

“ The bill of suspension was properly refused, as being a suspension of a decret absolvitor, as found in the case of the *Earl of Morton contra the Danish Asiatic Company*. But so far as that decret of the Admiral was condemnator, suspension is yet competent; that is, so far as it decerns for L.5 of expense, which had not been determined in the case formerly before the Lords by the former bill of suspension. It was at the same time observed, that the Judge Admiral was wrong in not sustaining process, as all that the decree of the Privy Council did was to remove the bar that stood in the way of his action of damages, that originally lay in any Court where the person might be found.

“ The Lords passed the bill, as to the L.5 of expenses decerned in the decret.”

1752. *June 26.*

IN what cases a superadded cautioner has a total or partial relief from the other creditors? Vide *July 10, 1745, Elizabeth Mirre against Sir Robert Pollock*, voce Cautioner. *Kilkerran*, p. 518.

1752. *July 14.*

DIN, Petitioner.

DAVID DIN in Easter Crinzeat, being imprisoned in the tolbooth of Edinburgh upon a caption, at the instance of William Watson, writer, for payment of L.4 Sterling, was thereafter arrested by warrant of the Lords, upon the petition of James Taylor, feuar in Easter Crinzeat, complaining of the said David's not obeying a sentence of the Lords, inflicting upon him transportation, for the crime of forgery. After which the order was renewed, for the Magistrates of Edinburgh to deliver over the person of the said David Din to any merchant who should become bound to transport him; and a merchant in Stirling having found caution to transport him, a new order was issued, directed to the magistrates and the petitioner, to deliver over the said David Din to the merchant.

The keeper of the tolbooth having refused to comply, until he was paid of his prison-dues, Din complained; and, upon advising his petition, with the keeper's answers, the Lords “ found the keeper not entitled to detain him.”

The Lords' sentence of transportation cannot be disappointed by any private debt: The keeper might as well not allow a criminal to be carried out in order to be whipt. *Kilkerran*, p. 432.