

No 68.

1752. *July 14.* JAMES ROB, Keeper of the Tolbooth of Edinburgh.

WHEN a man, for a crime, is condemned to be transported out of the kingdom, the transportation, being a part of the sentence, cannot be disappointed by any private debt. And therefore it was found, That the keeper of a prison could not prevent a transportation by his claim for prison-dues.

Fel. Dic. v. 4. p. 137. Sel. Dec. No 17. p. 20.

* * * This case is reported in the Faculty Collection :

ROB, keeper of the prison of Edinburgh, petitioned the Lords that he might be authorised to detain a criminal under sentence of transportation, until payment of the prison dues should be made. THE LORDS were of opinion, That, by indulging this privilege to jailors, every corporal punishment inflicted by law might be evaded ; and therefore,

“ They refused the petition.”

Petitioner, *And. Macdonall.*

Fac. Col. No 28. p. 48.

1754. *August 9.*HIS MAJESTY'S ADVOCATE *against* JOHN CAMERON of Fassefairn.

No 69.
A person imprisoned, to stand trial for forgery, not entitled to be admitted to bail.

IN the 1749, John Cameron of Fassefairn, in terms of 20th Geo. II. cap. 41. offered to the Court of Session a claim, consisting of seven different articles, upon the forfeited estate of Lochiel ; and, at the same time, he produced the bonds and other vouchers upon which his claim was founded.

In April 1753, he was committed to jail, upon a charge of high treason. Thereafter, in terms of the act 1701, William, Sess. 8. and 9. cap. 6. he served his Majesty's Advocate with letters of intimation, in order to be brought to trial. In August 1753, before the days of the letters of intimation were elapsed, a new warrant of commitment was obtained against him. The charge of high treason was laid aside ; and he was charged with another crime ; namely, the having forged some of the bonds above mentioned, or at least used them, knowing them to be forged. And there was this ground of suspicion against him,—that, after these bonds had been produced in Court, they were privately abstracted from the process ; and there was the strongest presumption that, upon the surmise of this charge, the defender himself had abstracted them. During the course of his trial for this crime, he presented to the Court three several petitions, one upon the 10th of August 1753, one upon the 6th March 1754, and

one upon the 5th August 1754, praying to be admitted to bail. And it was *pleaded* for him, That though, by the act 1701, bail might be refused in capital cases, yet it was not prohibited; that this position was justified by sundry instances in the practice of the Court of Justiciary; particularly in the 1740, in the case of Sir Robert Munro, and Mr Munro of Culrain, his brother, accused of murder; and in the case of John Hog, an officer in the Customs, charged with a capital crime. *2do*, By the same act 1701, he was entitled, from the long continuance of his trial, to be admitted to bail; for that when a prisoner runs his letters in terms of that act, he is thereby entitled, whatever his crime be, were it even treason, to have his trial concluded in forty days after it begins, otherwise, to be assoilzied, and set at liberty: that this is also the rule when the trial proceeds without the prisoner's having run his letters; otherwise, the privilege secured by this act to the subject might always be made ineffectual; that, however, he carried his argument no further than only to obtain his enlargement, upon finding bail. This was the more reasonable, as he had already suffered the grievous pain of sixteen months imprisonment; and his trial might possibly last as long as it had done; that as the act 1701 contained no exception with regard to the crime of forgery, the Lords would not incline to admit an extension, which might render useless the valuable privileges secured by this statute.

Answered for his Majesty's Advocate, That the defender is accused of a capital crime; and though the Court may have a discretionary power to grant bail, yet the defender is not entitled *de jure* to demand it; the less, that the long delay in this trial is entirely owing to the want of the writings said to be forged, which, from the proof already brought, plainly appear to have been abstracted by the defender. *2do*, By the law of Scotland, the crime of forgery is different, with regard to the manner of trial, from all other crimes; it is triable in the Court of Session; the diets are not peremptory; and the maxim is, *That nunquam concluditur in falso*: this crime therefore, *sua natura*, cannot fall under the limitations of the act 1701.

“THE LORDS refused the desire of the several petitions above mentioned, for admitting the defender to bail.”

In the course of this trial, “the LORDS also over-ruled the defender's plea, that this trial could not proceed, because the writs alleged to be forged were lost or amissing.

Act. *Advocatus, A. Pringle.* Alt. *Ferguson, Lockhart, et alii.* Clerk, *Gibson.*

Fol. Dic. v. 4. p. 137. Fac. Col. No 115. p. 171.