

No 121.

THE LORDS having considered the instrument mentioning the prisoner's offering his oath that he was not able to aliment himself in prison, and craving the benefit of the act of Parliament, and the bailies their taking his oath accordingly, together with the instrument intimating and exhibiting the said former instrument, personally, to the creditor, sustained the defences proponed for the Magistrates, and therefore assoilzied.

*Fol. Dic. v. 2. p. 174. Forbes, MS. p. 81.*

1724. July 8.

ADAM BOYLE, Merchant in Borrowstounness, *against* The MAGISTRATES of the Burgh of FORRES.

No 122.

A debtor being incarcerated for a debt, and liberated upon the act of grace, the magistrates of a burgh may refuse to incarcerate him again for the same debt, although the creditor offer to aliment him.

Mr BOYLE insisted in a process against the said Magistrates for payment of L. 405 Scots, contained in a bill accepted by John Roy, merchant in Forres, upon this ground, That he having raised horning and caption on the bill, caused Alexander Maclean, messenger, upon the 18th of December 1722, apprehend Roy, with orders to carry him to the prison of Inverness; that notwithstanding thereof, upon the 19th of the said month, the said Magistrates ordered Maclean to carry Roy to the prison of Forres; which he refusing, because of his orders to carry him to Inverness, they caused one Nicolson a messenger apprehended Roy upon another caption, and commit him prisoner to their own tolbooth, where they allowed him to go out and in at his pleasure.

The Magistrates, without admitting the facts, rested their defence upon this single point, ' That the prisoner had been formerly incarcerated at the pursuer's instance for the same debt in their tolbooth, and was duly liberated ' from prison upon the act of grace after intimation to the pursuer; and therefore he could not be again imprisoned for the same debt.'

It was *answered* for the pursuer, That nothing could hinder him to imprison Roy of new, being content to aliment him; the act 32. Parl. 1. Sess. 6. of K. William, being only in favours of the royal burghs, and not in favours of prisoners.

*Replied*, That as the act was designed for the ease of royal burghs, so it likewise designed to favour poor prisoners, and prevent their starving; that if the same creditor could of new imprison one duly liberated upon the act, then a debtor might be harassed out of his life; for he behoved to lie till a new intimation and for ten days thereafter, and even when then liberated, he might be immediately apprehended again, and incarcerated in the same or any other prison without end; that the royal burghs by such a practice would have no ease by the act, the liberation would be so short and precarious.

THE LORDS sustained the defence for the Magistrates.

No 122.

Reporter, *Lord Dun.*

Act. *Hamilton, sen.*

Alt. *Jo. Forbes.*

*Fol. Dic. v. 4. p. 141. Edgar, p. 73.*

1733. *February* JOSEPH HOME *against* the KEEPER of Tolbooth of Edinburgh.

No 123.

WHETHER a prisoner, who offers a *cessio bonorum* to the jailor, can notwithstanding be detained for the prison dues, or if the jailor is comprehended under the act of grace in common with other creditors, debated, but not determined.

*Fol. Dic. v. 2. p. 175.*

1734. *July 18.* HAY *against* the KEEPER of the Tolbooth of Edinburgh.

No 124.

A POOR prisoner having obtained an act of liberation upon his creditors refusing to aliment him, was notwithstanding detained by the jailor, upon pretence that his fees were not a debt that fell under the act of grace, and that he had a hypothec upon the prisoner's person for payment of the same; the LORDS found, That the jailor must aliment or liberate.

*Fol. Dic. v. 2. p. 175.*

\* \* The like found, 3th January 1736, Rattray *against* Keeper of the Tolbooth of Edinburgh, and 13th December 1737, Hopkins *against* Cleland.

See APPENDIX.

1734. *July 24.* M'KENZIE *against* BLAIR.

No 125.

IN a question about aliment craved by an indigent prisoner from his creditor, it was *objected*, That he was already sufficiently alimented, by being on the Exchequer charity-roll for L. 15 Sterling yearly. *Answered*, This is *jus tertii* as to the creditor, who can plead no *jus quæsitum* upon that score; and were the prisoner craving to be set at liberty upon a *cessio bonorum*, it would not include the King's bounty. The defence was repelled. But upon an after-application, 20th November 1734, this interlocutor was altered, and the defence sustained.

*Fol. Dic. v. 2. p. 173.*

1736. *January 27.* THOMAS DOWIE *against* CROCKAT.

No 126.

AFTER intimation made to the creditors in terms of the act of grace, if the debtor be arrested in prison by another creditor during the running of the ten.