

in order to trial than is necessary for conviction of the party accused; and, if the informer acted *bona fide*, and upon any plausible ground of suspicion, he is not to be found liable in damage, though the person should be acquitted; for, when men are robbed, they are not to be put in terror of damages, and thereby to be restrained from taking the legal method of obtaining redress.

Kilkerran, p. 160.

No. 8.

1748. June 23.

PHILP *against* MAGISTRATES OF EASTER ENSTRUTHER.

A person imprisoned without a written warrant, is entitled to damages, although there were a sufficient ground of commitment.

Kilkerran. D. Falconer.

No. 9.

* * This case is No. 37. p. 13953. *voce* REPARATION.

1752. June 3. Ross *against* JAMES and WILLIAM ROSE.

William Ross, late clerk to Mowat and others, the Banking Company at Aberdeen, was committed prisoner to the tolbooth of Aberdeen, upon a warrant by the Magistrates, proceeding upon a complaint in name of James and William Rose, who had joined as cautioners in a bond with Ross for his fidelity as clerk to the Company, to the extent of £700 Sterling, representing that he had embezzled £400 of the Company's money, and craving he might be imprisoned till he should find caution for their relief. And he being brought before the Magistrates, and alleging that part of the £400 amissing had been employed in trade with the Company's allowance; and as to the residue thereof, owning he could give no account what had become of it, the Magistrates gave warrant for his imprisonment, till he should find caution *judicio sisti et judicatum solvi*.

Ross applied, by bill of suspension and liberation, to three Ordinaries in time of vacance, Murkle, Kilkerran, and Shewaltoun, on this ground, That this summary imprisonment was for a civil debt, and therefore unwarrantable.

But the Ordinaries were not of that opinion. They considered it as a crime in the clerk to embezzle the Company's money, and therefore refused the bill, but restricted the caution to caution *judicio sisti*.

Upon the sitting down of the Session, a new bill was presented to Lord Elchies Ordinary on the bills, who reported the case, and stated the only doubt to be, How far the application was competent to the cautioners? For he made no doubt, but that the Company might have applied for the warrant as for a crime.

No. 10.

Summary imprisonment of a clerk to a company for embezzlement of company's effects, at the instance of his cautioners.