

No 40.

A payment was thereupon made of L. 24 to account ; but notwithstanding thereof Pringle put his caption in execution, and James Lesly was imprisoned and booked for the whole debt, without any deduction for the payment. Being liberated on the act of grace, he pursued Pringle in an action of oppression and damages. *Urged* in defence, The pursuer had suffered no injury in being booked for the whole debt, except being obliged to pay a few shillings for liberation money. THE LORDS found the defender had acted irregularly, and therefore found him liable in damages, which they modified to L. 15 Sterling.

Fol. Dic. v. 4. p. 227.

* * * This case is No 37. p. 11749, *voce* PRISONER.

S E C T. VIII.

Negligence in Office.

No 41.

1624. July 20.

BELL *against* BAILIES of DUNSE.

IN an action at the instance of John Bell, against the Bailies of Dunse, for payment of L. 1000, addebted to him by his debtor, because they suffered his debtor to escape out of their ward, wherein he was incarcerated, being apprehended by letters of caption, by a messenger, who presented him to their jailor, which jailor received him from the said messenger, and put him in ward, and kept him therein, by the space of divers days ; this action was not sustained against the Bailies ; for the rebel not being offered to the Bailies, nor commanded by them to be received by the jailor, nor the rebel's warding ever intimated to the Bailie's selves;—the LORDS found, that the Bailies were not obliged ; albeit it was alleged, that they should be answerable for their jailor ; and therefore the action was not sustained against them, but they were assoilzied.

Act. ———.

Alt. *Belsher.*Clerk, *Hay.*

Durie, p. 140.

No 42.

1680. November 17.

OGILVIE *against* RIDDEL.

The clerk of the bills found liable for that part of a sum for

OGILVIE of Logie pursues Walter Riddel, that he expedie a bill of suspension, as substitute clerck to the bills, at the instance of three suspenders, and took but caution for two. The defender *alleged*, That there was nothing of design here, but inadvertance only ; and that the writers who draw the bills of sus-

pensions do present the bonds of caution, and are therein; *2do*, That James Nicolson hath the trust to see the sufficiency of cautioners, from the clerk of the bills.

No 42.
which he had
neglected to
take caution.

THE LORDS repelled the defences, and decerned Walter Riddel to pay the third part, for which he had taken no caution, the pursuer assigning him to that third part of the bond.—See PUBLIC OFFICER.

Stair, v. 2. p. 799.

* * * Fountainhall reports this case :

WALTER RIDDEL keeper of the bills under Sir William Bruce, upon a complaint given in against him to the Lords by Logie, is decerned in the sum of 1300 merks, for receiving a bond of caution in a suspension for three suspenders, and it was found to be a bond of caution only for two of them, and not for the third ; but they ordained the creditor to assign Walter to the debt for his relief. He confesses, if the creditor-charger lived within the city of Edinburgh or suburbs, ere he accept any caution against him, that he is obliged to intimate it to him, that he may compear and see sufficient caution found ; and if he do not acquaint them, that he is liable ; but denies that he can do any more but try that they are reputed and holden sufficient, where the creditors live not in Edinburgh.

Fountainhall, v. 1. p. 116.

1680. December 2. ALSTOUN against RIDDEL.

JAMES ALSTOUN pursues Walter Riddel, sub-clerk of the bills, upon this ground, that Walter had expedite a bill of suspension, upon caution by a person whose name was put to the bond, though he was dead eight years before, albeit the pursuer required Walter to take sufficient caution, and protested for damage, by an instrument produced. The defender *alleged* absolvitor, because all that he was obliged by the constant custom of the office, was to take information of the sufficiency of cautioners, which he did in this case, and is content to depone thereupon ; but it was impossible for him to know the verity of the subscriptions, nor can he certainly know the condition of the cautioners, and so can be no otherwise liable unless by his oath it appear that he hath colluded with the suspender, or neglected to take information from persons living near that place where the cautioner resides. The pursuer *answered*, That the trust of the clerk of the bills, is to take sufficient caution, which he must do at his peril ; and albeit he might be deceived, whether the cautioner were sufficient, yet he should always know that the cautioner is reputed sufficient ; *2do*, In this case the pursuer having required him by an instrument, he

No 43.
The clerk
of the bills
found liable
for a debt,
for taking as
cautioner in a
suspension a
person who
had been long
dead.