

No 126. days, or after elapse thereof, there is no necessity of a new intimation to him; but in terms of the *penult* clause of the act, he must find instant security to aliment, otherwise the prisoner may be set at liberty.

Fol. Dic. v. 2. p. 174.

1738: February 21.

ROBERT GORDON *against* The MAGISTRATES OF EDINBURGH.

No 127.

IN this case, the LORDS found, That a person liberated upon the act of grace might be recommitted for a debt contracted posterior to his liberation.

C. Home, No 88. p. 143.

1738. November 23.

M^cLESLEY, Petitioner.

No 128.

A PRISONER is only entitled to aliment when he is imprisoned for debts arising *ex contractu*; so the LORDS understood the words 'civil debts' in the act of Parliament, in opposition to debts arising *ex delicto*.

And therefore, where a party had, for a gross delinquency in the execution of a caption against his debtor, been decerned in a certain sum in name of damage and expense to the person injured, and ordained to be carried to prison, and there to remain till payment, he was 'Found not entitled to aliment; notwithstanding that this was not a penalty, properly so called, imposed for a crime, but a damage arising *ex delicto*, for which he was imprisoned.

Kilkerran, (PRISONER.) No 1. p. 430.

1754. January 5. ALEXANDER WILL *against* PATRICK URQUHART.

No 129.

A prisoner is not entitled to the benefit of the act of grace, who is imprisoned till he perform a palinode, and does not offer caution for performance.

PATRICK URQUHART obtained decret against Alexander Will before the Commissary of Aberdeen, decerning Alexander Will to pay him 50 merks Scots in name of damages and expenses for having defamed him; and also ordaining him to appear in the church of Fraserburgh to ask pardon, as is usual in such cases.

Alexander Will being charged with horning upon this decret, and incarcerated within the tolbooth of Stirling, he applied to the Magistrates for an aliment, in terms of the 32d act Parl. 1696, which they modified to 3s. 6d. Scots per day; and ordained Patrick Urquhart to pay the same under the usual certification.

Patrick Urquhart offered a bill of suspension of this sentence of the Magistrates; and *pleaded*, that the act of Parliament was only in favour of prisoners for civil debts, that is, such debts as arise *ex contractu* or *quasi contractu*, and

therefore could not be extended to this debt, which arose *ex delicto*; as was found 28th November 1738, William Leslie, supplicant, No 128. p. 11810. For, with respect to such debts, it is a maxim, *qui non habet in ære, luat in pelle*; and prisoners for criminal causes are expressly excepted from the benefit of the act.

No 129.

2do, The other part of the decret being *ad factum præstandum*, the act could not extend to it; for it was in Alexander Will's power to have obtempered that part of it long before his incarceration.

Answered for Alexander Will, That the exception in the act respects only the case of criminals in order to trial, or those who are incarcerated by a sentence *in modum pœnæ*; neither of which is his case; he being incarcerated by the ordinary form of personal diligence for a debt, and therefore ought to have the benefit of the act, from whatever cause the debt arose. And as to that part of the decret appointing him to ask pardon in the church of Fraserburgh, he was willing to enact himself to obtemper it, if sufficient time be allowed to him for that purpose.

"THE LORDS found, that the act of Parliament does not take place in commitments for delicts; but, in respect that Alexander Will offered to obtemper the Commissary's decret, found, that Patrick Urquhart ought either, on Alexander Will's enacting himself under the penalty of L. 5 Sterling, to obtemper the said decret as to the *palinodea*, to set him at liberty, or otherwise to alimment him."

Act. ———.

Akt. Rob. Macintosh.

B.

Fol. Dic. v. 4. p. 141. Fac. Col. No 95. p. 145.

1759. June 19. ROBERT ABERCROMBY *against* JAMES BRODIE.

ROBERT ABERCROMBY engaged to serve James Brodie, saddletree-maker in Glasgow, as his journeyman for a term of years; but after borrowing from his master L. 10 Sterling, for which he granted a bill, Abercromby deserted his service, and went to Edinburgh. Brodie raised a caption on the bill, and caused him to be apprehended and imprisoned in the 1753; and after being confined some time, and alimmented by Brodie, he was liberated in terms of the act of Parliament 1696, commonly called the act of grace.

In 1757, Abercromby returned to Glasgow, and worked with other masters, without paying his debt to Mr Brodie; who thereupon again imprisoned him upon the same caption.

Abercromby got a bill of suspension and liberation passed without opposition; and commenced a process of wrongous imprisonment against Brodie, concluding for the penalties imposed by act 6th 1701; which process, and the suspension, came to be discussed together.

No 130.

Found that a debtor liberated from prison on the act of grace, may be again imprisoned on the same diligence.

See No 132.