

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.