

November. 22. 1743. and November. 2. 1744.

BELL *against* MAXWELL Bailie of Wigtoun, and Others.

No. 7.

A person found entitled to damages, who, without any decree being taken against him, was summarily imprisoned for refusing to depone to the number of cattle carried out of the county without paying the customary dues.

*Kilkerran.*

\* \* \* This case is No. 35. p. 13951. *voce* REPARATION.

1747. November 27.

JAMIESON *against* NAPIER.

No. 8.

Some general rules with respect to commitments in order to trial.

Mr. Napier of Blackstoun having had the lock of his drawers picked and money stolen, whereof, in the nature of the thing, he could have no other evidence but his own word, as men do not let any body know what money they have in their repositories, applied to the Sheriff-substitute of Renfrew for a warrant to commit John Jamieson one of his own workmen to prison, wherein he set furth the grounds of suspicion, that he was the person guilty; and, on this application, the Sheriff-substitute, without taking any precognition, granted warrant for committing Jamieson to prison, which was done accordingly. Jamieson having brought an action of wrongous imprisonment and damages against both Blackstoun and the Sheriff, wherein appearance was made for Blackstoun (for as to the Sheriff, he neither compeared, nor was insisted against) a condescence *hinc inde* was made of facts, and a proof led; which the Lords, on advising, having found no evidence of the theft, by their first interlocutor, found Blackstoun liable in damages; but, on advising bill and answers, assoilzied him.

It is unnecessary to state the particular facts, as circumstantial cases can be of little use in the decision of any other; all that is intended is, to lay down the general rules whereon the Lords proceeded.

1st, That where a man finds the lock of his repository picked, and misses money, it is what in the nature of the thing he can produce no other evidence of than his own word or oath, as men are not in use to let any body know what money they have by them. One may prove by those of his family, what bulky goods he had, and in what place they used to lie, but the case is different as to money.

2dly, That in the proof of theft, or accession to theft, the greater the opportunity the person accused has to commit it, and the greater difficulty there is to guard against it, the more slender evidence is to be admitted in proof of the fact, or to justify an application for a warrant of commitment.

3dly, Far less evidence is necessary to justify an information for commitment