

Accordingly, the LORDS " Found Jonathan Ormiston and James Lorain liable to the pursuer in damages, conjunctly and severally. But, before answer, as to allowing the pursuer his oath *in litem*, ordained the pursuer to give in a condescence of the persons from whom he bought the goods, that were sequestered by order of the Sheriff of Berwick, and what the prices of said goods were when bought."

No 33.

*Fol. Dic. v. 4. p. 232. Kilkerran, (REPARATION.) No 6. p. 489.*

1789. December 20. LAING against WATSON.

No 34.

A JUDGE, as well as a party, found liable in damages for granting a *meditatione fugæ* warrant on a groundless application.

*Fol. Dic. v. 2. p. 232. Fac. Col.*

\*.\* This case is No 12. p. 8555. *voce* MEDITATIO FUGÆ.

## S E C T. VII.

## Wrongous Imprisonment.—Deforcement.—Oppression and Damages.

November 22 1743, and November 2 1744.

BELL against MAXWEL Bailie of Wigton and Others.

THE TOWN of Wigton pretending a right of exacting a toll of twopence per head upon all cattle carried out of the shire; and the tacksman of the toll being informed that Alexander Bell, servant to Fullarton of Fullarton, had bought some cows for his master's use, and carried them away by the Carrick-road, brought Bell, who happened, after some distance of time, to be occasionally at Wigton, summarily before James Maxwell, Bailie, when the customer alleged, he had carried a parcel of cows out of the shire, without paying the toll due to the town, and insisted that he ought to be ordained to depone upon the number. The Bailie accordingly ordained him to depone; and, upon his refusal, committed him to prison. After he had been some days in prison, a process was brought against him, wherein being held as confessed on the number contained in the libel, he was decerned in twopence per head.

Of this decree he obtained suspension, and also pursued a process of wrongous imprisonment against the Bailie and customer, &c. In discussing which processes, it being averred for Bell, that the town had never been in use to

No 35.

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 country, without paying the customary dues.

No 35.

exact toll for any cattle carried out of the shire of Wigton, other than such as passed the water of Cree, which the cattle in question had not done; and on the part of the defenders, that it was the custom of the burgh summarily to apprehend persons even *ex intervallo*, a conjunct proof before answer was allowed to either party: Upon advising whereof, the LORDS, 22d November 1743, "Found the commitment illegal, and that therefore the defenders were liable in damages."

Upon advising this proof, it was the unanimous opinion of the Court, That the town had no right to a toll, except for cattle passing the water of Cree; but judgment could not be given upon that point for want of parties, the town not being in the field, farther than to the effect of suspending the decree, which was left to the Ordinary, and judgment only given as above, that the commitment was illegal.

As to which, it was the opinion of the Court, that supposing the toll due, the person liable, being found within the town, might be summarily apprehended even *ex intervallo*, and carried before the Magistrate, and obliged to find caution *judicio sisti*, or be sent to prison; or that he might, when summarily apprehended, be directly libelled against, and the fact offered to be proved by his oath; and upon refusing to depone, he might be held as confessed and decerned, and upon that decree committed to prison; for it were absurd to say, that, in such a case, it is necessary to pursue for every trifling toll in another county. But the error in the present case lay in this, that it appeared from the instrument taken upon the imprisonment, that the pursuer was, without taking decree, imprisoned for refusing to set forth upon oath what number he had carried out of the shire.

N. B. The defenders having reclaimed, it appeared in the after proceedings, that, after the pursuer had been some days in prison, he had offered caution to answer in any process that might be brought against him, and that the offer was refused. But it was thought proper to state the case as it lay before the Court, when the above interlocutor was pronounced, as what the Court would have adhered to, without that circumstance, whereof the proof was only allowed, as it might have influence on the point of damages.

*Kilkerran, (WRONGOUS IMPRISONMENT.) No 1. p. 617.*

No 36.  
Damages being given for oppression, in an action libelled on the statute anent wrongous imprisonment, no ex-

1745. February 14. ALEXANDER STEEL *against* Bailie RAMSAY.

ALEXANDER STEEL, dyer in Dundee, pursued Bailie John Ramsay for wrongous imprisonment, oppression, and damages. THE LORDS, 1st February 1745, "Found the proceedings of the Bailie irregular; and in respect of the imprisonment, found him liable in damages to the pursuer, which they taxed to 100 merks Scots, and decerned the defender to pay the same to the pursuer against