

1774. March 5. ROBERT WATSON *against* HIS CREDITORS.

CESSIO BONORUM.

THE pursuer was apprehended on a *meditatione fugæ* warrant, and committed to prison until he found caution *judicio sisti*: he did not find caution; but pursued a *cessio bonorum* against his creditors.

The following opinions were delivered:—

HAILES. I doubt how far a man who has been imprisoned till he should find caution *judicio sisti*, can pursue a *cessio bonorum*: he is not imprisoned for a debt, but *ad factum præstandum*: he may surely find caution to appear if he has any character at all. The question is not new: the Court has repeatedly held the objection to be good.

[Mr Dickson, for the pursuer, quoted a case, *Thomas Small against Sir James Clerk* in 1764.]

COALSTON. At this rate, the pursuer must lie in prison for ever. He says he cannot find caution. If we permit not the *cessio* to proceed, where is his remedy?

KENNET. His remedy is in a suspension and liberation on juratory caution: this will set him at liberty: if thereafter any of his creditors should incarcerate him, he will be in the shape of the law.

MONBODDO. I should doubt more of the legality of that remedy than of the one sought. There must be a relevant ground of suspension before we can grant liberation. We cannot give a man his liberation merely because he cannot pay.

On the 5th March 1774, “The Lords found that, in this case, the pursuer may insist in a *cessio*.”

*Act. J. Dickson. Alt. Absent.*

N.B.—This *humane* interlocutor was pronounced with but two or three contradictory voices, and without a vote. It overturns what was considered to be law. Great is the favour of every man who appears in the shape of a *dyvour*.

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