

1710. July 27.

JOHN LAMB, Dyer in Edinburgh, Supplicant, *against* JAMES CLELAND, Messenger, and THOMAS GIBSON, Apothecary there.

No 16.

A person was in the messenger's hands before a sifit was procured or intimated. The messenger proceeded after intimation to put him in prison. Freed as well as his employer from expences, *propter probabilem ignorantiam juris.*

JOHN LAMB having complained upon James Cleland and Thomas Gibfon, for contempt of the Lords' authority, by incarcerating the complainer, upon a caption against him at the instance of Thomas Gibfon, after intimation of a sifit upon a bill of suspension :—THE LORDS found the incarceration unwarrantable ; and therefore affoizied the complainer from expences to Gibfon the creditor. Notwithstanding that he, the complainer, was in the messenger's hands before the sifit was either procured or intimated : And it was *alleged* in answer to the complaint, That a messenger's touching one, and keeping him prisoner in his hands, has all the legal effects of actual imprisonment ; in so far as such a prisoner could not be effectually released upon a suspension, without a charge to set at liberty ; more than one could be set out of prison without such a charge. Whence it is, that sifits upon bills of suspension run ordinarily thus, Sifits Execution, &c. unless the party be in the messenger's hands. But though the commitment of John Lamb to prison, after intimation of the sifit of execution, was not warrantable—THE LORDS found the Messenger, or his employer, not liable to pay any expences to him, upon the account of his incarceration, in respect they had a probable ground for their mistake.

Fol. Dic. v. 1. p. 106. Forbes, p. 436.

1766. February 12.

SIR JOHN GORDON of Invergordon, Bart. *against* CAPTAIN JOHN FORBES of New, Factor upon the annexed estate of the late Earl of Cromarty.

No 17.

Bona fides found not to protect against statutory penalties.

The estate of Cromarty, lying mostly in the shire of Cromarty, became forfeited to his Majesty, by the attainder of George Earl of Cromarty, and was, by statute 25th Geo. II. annexed to the Crown. Captain Forbes was named factor for the public on the estate of Cromarty, and acted as such for many years ; he was neither proprietor nor superior of any lands in the county of Cromarty ; but, in several acts of Parliament appointing commissioners of supply for that county, Captain Forbes was named as a commissioner, and designed ' Captain John Forbes of New, factor upon the annexed estate of Cromarty ;' and, in consequence of being so named, he acted with the other commissioners, when occasion required.

Sir John Gordon exhibited a complaint to the Court of Session against Captain Forbes, for recovering penalties incurred by Captain Forbes acting as a commissioner of supply, without being possessed of the qualification of L. 100 valued rent, required by law ; and the Court, 7th August 1765, found he had no title