

1712. January 8, HERIOT against HAMILTON.

No 37.

THE LORDS refused to restrict the penalty in a lawburrows which was 1,000 merks to 200, (as was pleaded, because the master was not infest, and so an unlanded gentleman,) because, though he was not infest, he was an apparent heir to a freeholder who stood infest, and so was liable to same penalty.

Fol. Dic. v. 1. p. 533. Fountainhall.

* * * This case is No 5. p. 2911, *voce* CONCURSUS ACTIONUM.

1752. February 21. MARION FORREST, Complainer.

WILLIAM NICOL taylor in Hamilton, obtained letters of lawburrows against Marion Forrest, and thereon charged her on the January to find caution, which accordingly she did upon the 23d of said month; notwithstanding which, Nicol proceeded to denounce her, and procured letters of caption, in virtue whereof she was apprehended and committed to the tolbooth of Hamilton, although she told the messenger that she had found caution, and would shew him the certificate thereof, if he would go along with her to her house, which was hard by, but which he refused. On the 10th current, a procurator for her went to Nicol's house with a notary and witnesses, and there made intimation to him, that caution had been found, and required him to consent to her being set at liberty, otherways protested he should be liable in damages; and the same intimation and requisition was made to the keeper of the prison, but all to no effect.

She now applies by summary complaint, and, after observing that she was not obliged to intimate to the charger that she had found caution, that the only command of the letters is to find caution, which she obeyed, and it was the charger's business to enquire at the proper office, whether or not she had given obedience, before he proceeded to diligence; prays that the charger may be found liable in her damages, and in respect of the certificate now produced, that she may be ordered to be set at liberty.

On moving this complaint, it was stated as a doubt, whether where caution in a lawburrows is found, there should not also be a suspension of the charge, and that, as other suspensions, intimated to the charger; and the clerk to the bills being called upon to inform what the practice is, he *answered*, That where caution is found within six days of the charge, no suspension is sought; but if the caution is found after the lapse of six days, then the practice is to suspend, and to intimate the suspension.

THE LORDS " appointed the charger to be served with a copy of the complaint, and to answer in days after service; but refused on this petition to

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