

No 126. days, or after elapse thereof, there is no necessity of a new intimation to him; but in terms of the *penult* clause of the act, he must find instant security to aliment, otherwise the prisoner may be set at liberty.

Fol. Dic. v. 2. p. 174.

1738: February 21.

ROBERT GORDON *against* The MAGISTRATES OF EDINBURGH.

No 127.

IN this case, the LORDS found, That a person liberated upon the act of grace might be recommitted for a debt contracted posterior to his liberation.

C. Home, No 88. p. 143.

1738. November 23.

M^cLESLEY, Petitioner.

No 128.

A PRISONER is only entitled to aliment when he is imprisoned for debts arising *ex contractu*; so the LORDS understood the words 'civil debts' in the act of Parliament, in opposition to debts arising *ex delicto*.

And therefore, where a party had, for a gross delinquency in the execution of a caption against his debtor, been decerned in a certain sum in name of damage and expense to the person injured, and ordained to be carried to prison, and there to remain till payment, he was 'Found not entitled to aliment; notwithstanding that this was not a penalty, properly so called, imposed for a crime, but a damage arising *ex delicto*, for which he was imprisoned.

Kilkerran, (PRISONER.) No 1. p. 430.

1754. January 5. ALEXANDER WILL *against* PATRICK URQUHART.

No 129.

A prisoner is not entitled to the benefit of the act of grace, who is imprisoned till he perform a palinode, and does not offer caution for performance.

PATRICK URQUHART obtained decret against Alexander Will before the Commissary of Aberdeen, decerning Alexander Will to pay him 50 merks Scots in name of damages and expenses for having defamed him; and also ordaining him to appear in the church of Fraserburgh to ask pardon, as is usual in such cases.

Alexander Will being charged with horning upon this decret, and incarcerated within the tolbooth of Stirling, he applied to the Magistrates for an aliment, in terms of the 32d act Parl. 1696, which they modified to 3s. 6d. Scots per day; and ordained Patrick Urquhart to pay the same under the usual certification.

Patrick Urquhart offered a bill of suspension of this sentence of the Magistrates; and *pleaded*, that the act of Parliament was only in favour of prisoners for civil debts, that is, such debts as arise *ex contractu* or *quasi contractu*, and