

S E C T. XII.

Malversation in Office.

1740. July 12. & 25. PRIMROSE Suspender.

No 25.

THE Justices of the Peace of Haddingtonshire, having fined an officer of Excise for having entered the house of an alehouse-keeper under cloud of night, without the presence of a constable, and searched for run brandy, in five pounds Sterling to the party, and ten shillings to the procurator-fiscal, though neither forcible entry was alleged, nor that the landlord opposed or declined the search, at making whereof he was present; and a bill of suspension of this decree being refused by the Ordinary, two reclaiming petitions were refused without answers.

Fol. Dic. v. 3. p. 178. Kilkerran, (DELINQUENCY) No 6. p. 157.

1749. February. HOPE against DRUMMOND.

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ENSIGN HOPE gave in a summary complaint against Robert Drummond, messenger, for having executed a caption against Sir Alexander Hope his father, when disordered in his senses, and in the infirmary, into which he had been put the night before by his friends on that account, and having thence carried him, not to prison, but to a public house, where he had searched his pockets and taken from him what money he had.

A messenger
fined for mal-
versation in
office.

Drummond having been appointed to attend, *answered*, That he owned he had, in virtue of a caption, apprehended Sir Alexander in the infirmary, which was no sanctuary: That he did not to him appear to be disordered in his senses: That he carried him to a public house at his own desire, that he might have time to apply to his friends to bail him; but not prevailing on any, he accepted of four pounds four shillings Sterling, which Sir Alexander voluntarily gave to his employer to account of the debt; and denied putting hand into Sir Alexander's pockets.

Upon proof brought by either party, it appeared that Sir Alexander was in great disorder in the infirmary: That the woman who keeps the house had remonstrated against taking him out in that condition: That the messenger would not desist: That Sir Alexander went into a chair, in which he was carried to a house between the head of Forrester's wynd and the tolbooth: That he there again behaved like a person not sound in his judgment, having wrote letters to Gavin Hamilton and others, which appeared to the landlord in the house, who

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read them, to be unintelligible: That he was kept in that house four or five hours: That, at last, he gave the messenger L. 4: 4s. which the messenger gave to his employer, who was at the time in a different room in the house, and then the messenger left him about 11 o'clock at night; but no evidence was brought of the messenger's having put his hand into Sir Alexander's pocket.

Upon advising this proof, the LORDS found, 'That the execution of the caption was illegal and oppressive, and with a malevolent intention to extort money from the debtor; and declared the defender incapable of the office of messenger and notary, and appointed the same to be intimated to the Lyon-court, and committed him to prison for a month.'

It was very plausibly *argued* from the Bar, that even madness itself was no bar to the execution of the King's letters. Nor was the judgment put upon it, though the condition Sir Alexander was in, was, no doubt, the main circumstance which influenced the judgment; for, had there been no more in it, than the carrying the prisoner to, and detaining him some hours in a private house, that he might have time to solicit his friends to bail him, and letting him go upon his paying a part of the debt, it would have merited a slight censure, if any: But, in the circumstances Sir Alexander was in, the Lords considered the defender's conduct in not carrying him directly to prison, but detaining him so long in a public house, till a little money was got, as having proceeded, not from his opinion of the duty of his office, but from an intention to extort the money, which his office did not warrant him to do: At the same time, the punishment was by some thought rather too severe.

Fol. Dic. v. 3. p. 178. Kilkerran, (DELINQUENCY) No 13. p. 161.

See REPARATION.

See PROOF.—Delicts how proved,

See APPENDIX.