

THE LORDS found, That Cassils' entry being the next lawful day, it was *modica mora*, and was sufficient implement, unless the pursuer could instruct a detriment to him betwixt the days; and found also that reply relevant, that Davie consented to the prisoner's liberation, to make him liable.

Fol. Dic. v. 1. p. 114. Stair, v. 2. p. 119.

No 3.

1681. July 7.

POLSTEAD, Citizen of London, against Mr RICHARD SCOT, Minister.

SAMUEL POLSTEAD having apprehended Maxwell of Kirk-house by caption upon a bond of 2600 merks, did, at the desire of Mr Richard Scot minister, dismiss him upon a bond, 'to present him at Dumfries the first day of February last, or otherwise to pay the sum;' and now being charged to pay the sum, he suspends upon this reason, that Kirk-house was taken with another caption at Edinburgh, whereby it became *factum imprestable* to present him at Dumfries the day foresaid, but he was willing to present him now in as good condition as he was before.—The charger answered, *non relevat*, for albeit death, or sickness, or any accident not occurring by the prisoner's fault, might have been relevant, if the party had been offered so soon as that accident ceased; yet it cannot be extended to any impediment by the prisoner, or his cautioner's fault or fact, such as to be under the hazard of other captions; for if that had been expressed, as it is pretended to be implied, no man of sense would have dismissed a prisoner in these terms that he should be re-produced such a day, if he were not taken by other captions for his own debt.

THE LORDS repelled the reason simply, albeit the prisoner had been offered immediately after he was free of the other caption.

Fol. Dic. v. 1. p. 114. Stair, v. 2. p. 888.

No 4.
It would be a good defence against a bond of presentation, that the presenting had become *factum imprestable*, without any fault of the debtor or his cautioner. But the being imprisoned for another debt was considered to be the fault of the debtor.

1682. March 3. RICHARD OCKLEY against GRIERSON of Lag.

A PERSON obliged to present a rebel upon a precise day, betwixt two and three, not having offered him till between seven and eight, being charged for the debt, suspended upon this reason, that their journey was retarded some hours, upon the account that the day of presentation was a public fast-day by authority, and that the rebel was carried to the pursuer's house, and offered to him, but he refused to accept of him; and the defender not being master of the caption, could not put him in prison.

THE LORDS sustained the reason; the suspender giving his oath, that the fast was the reason he was not presented at the precise hour, and burdened the suspender to present the rebel *cum omni causa*, within fifteen days.

Fol. Dic. v. 1. p. 114. Harcarse, (CAPTION.) No 229. p. 54.

No 5.
A reasonable cause for not presenting the debtor at the precise hour, will be sustained.