

WRONGOUS IMPRISONMENT.

17067

for civil debts; but thought if any were illegally and unwarrantably incarcerated, though for debts, that they had an action in law for damages sustained by the said illegal imprisonment, by virtue of the common law, before that act 1701 was made.

No. 3.

Fountainhall v. 2. p. 267.

1705. February 10.

ROBERTSON *against* PEDISON.

At this same time a process of this kind was pursued by Alexander Robertson, taylor, against Rory Pedison shoemaker. They having adjacent tenements lying at the head of the Canongate, Rory alleged, That Alexander had encroached upon a too-fall of his, and caused pare it four inches, and put sundry joists in it whereby his wall was much weakened; and having obtained a decreet against him for repairing the too-fall, and putting it into its pristine condition, he did imprison him. Robertson suspended, and also raised a process of wrongous imprisonment against the said Roderick, for incarcerating him for doing a fact which was implemented and done before; and so he having given full obedience to the decreet, he could not be legally incarcerated on the same decreet, and therefore claimed £2000 of damages; which process the Lords sustained, and admitted to his probation, though it does not fall under the compass of the act 1701, but is only founded on the common law. The English are very exact in their pursuits on false imprisonments, determining in what cases it is lawful, and in what not, and how remediable; and modifying so much expense for every hour they are unjustly detained. As to the putting in my joists to rest in my neighbour's wall, Robertson was ordered to take them out, because he had not a servitude; for law says, non licet lignum in alienum parietem immittere sine jure servitutis L. 2. et L. 33. D. De servitut. urb. præd.

No. 4.
Found as
above.

Fountainhall, v. 2. p. 257.

1736. November 26.

ARCHIBALD CAMPBELL, Merchant in Edinburgh, *against* GILBERT RAMSAY,
Baillie in Kelso.

The said Archibald Campbell set out from Edinburgh to London, along with Mr. Joseph M'Kenzie; but, when they came to Kelso, an information, signed by Quarter-master Stewart, &c. was given in to Mr. Ramsay as Bailie of that place, setting forth, That Campbell had clandestinely carried away M'Kenzie from his wife and family; and that he had likewise prevailed upon him to carry off several writs and evidents of his estate; therefore praying a warrant to detain Campbell

No. 5.
Whether
the penal-
ties in the
act 1701,
reach other
cases than
those which
are therein
particularly
enumerated?