

WRONGOUS IMPRISONMENT.

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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,
Bailie 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 penalties in the
act 1701,
reach other
cases than
those which
are therein
particularly
enumerated?

No. 5. until he should find bail not to carry M'Kenzie away with him, and to answer to a competent Court for what he had already done.

In consequence of this information, the Bailie granted a warrant, in virtue whereof, Campbell was incarcerated; but, upon finding bail, he was liberated. After which, he brought an action against Ramsay for wrongous imprisonment, wherein the Lords found his proceedings illegal and oppressive. Campbell then insisted for the penalties in the act 1701.

Pleaded for the Bailie: That this case does not fall within the statute; seeing wrongous imprisonment, in the sense of that law, is no other but imprisonment without a warrant expressing the cause for which the party is committed, or the refusing to admit to bail in cases not capital, or the undue delaying of trials, as is more particularly mentioned in the act, which is likewise evident from the preamble; whereby it appears the Legislature had nothing in view but to correct abuses in the form of commitments, or in the setting at liberty.

Answered for the pursuer: There is no doubt the statute intended to give a remedy to certain particular abuses; such as committing a person without any warrant of commitment, &c.; but, though the law expressly guards against these particulars, yet the general scope thereof is, to protect the liberty of the subject by restraining all manner of undue or unwarrantable commitments; and, it being impossible to enumerate particularly every case against which a remedy is intended, therefore it subjoins a general clause, "extending the pains to all cases of confinement, not either consented to by the party, or inflicted after trial by sentence;" whereby every imprisonment not authorised by law is comprehended.

And, as the present case falls not within any of the exceptions specified in the statute; so, of consequence, the pains thereof must reach it, as the same has been found to have been illegal and oppressive.

The defender replied: The words of the clause referred to, shall be extended to all confinements, imports no more, but that all the provisions, &c. shall take place in every confinement, though it was to one's own chamber; and the exception subjoined thereto points out that the clause refers to commitment without a warrant expressing the reasons thereof, and to no other delinquency; because, in these excepted cases, where either the party consents, or imprisonment is inflicted, by sentence after trial, there is no need of a signed information containing the reasons of imprisonment; therefore it cannot be construed to extend the statute to cases which are not contained therein, or to the penalties of the law where there is no contravention.

The Lords found, That this case did not fall under the act of Parliament anent wrongous imprisonment.