

1736. December 14.

THOMAS PATERSON Wright in Glasgow, *against* JOHN ANDERSON Wright in  
the GORBALLS.

In the process at the pursuer's instance against the defender, for wrongous imprisonment, a proof having been led, at advising thereof, "the Lords found the pursuer was unwarrantably imprisoned, &c. and that a double of the warrant of commitment was refused to him, although desired; and found it proved, that the defender was accessory thereto; and found it not proved, that he had any warrant for so doing; which the Lords found relevant to subject him to the penalties in the act of Parliament anent wrongous imprisonment; therefore, &c."

The defender reclaimed, upon this ground, That any irregularity he had ignorantly fallen into, ought not to subject him to the penalties of the act 1701; because it was intended only to restrain the abuse of power in Magistrates or other officers of the law, who are entrusted with the power of committing their fellow-subjects to prison, as is evident from every part of it; particularly, the clause anent "imprisonment in order to trial, by a warrant in writ; the admitting persons to bail, &c;" and likewise, from the additional penalty over and above the fine; "viz. that persons guilty shall lose their offices;" none of which things are applicable to a private person, such as the defender, who is clothed with no authority, and who has no office to lose; neither was there any occasion to guard against incroachments on liberty committed by private persons, as that is what rarely happens; but, when such abuses do occur, they can be sufficiently restrained by the common rules of law, whereby every riotous or illegal proceeding is liable to be punished.

Answered for the pursuer: The design of the act was general, to protect the liberty of the subject, which, when incroached upon by a Magistrate, is no doubt a breach of duty; but it is still an higher offence, when committed by a private person, as he thereby assumes to himself a power which is one of the chief characteristics of Magistracy; besides, the clause extending this act to all confinements, not either consented to by the party, or inflicted after trial by sentence, shows, that the statute was not intended to be confined to officers of the law; and, indeed, without that, the act would have been very imperfect, if liberty had been secured against Judges, but insecure against private persons, who have no authority at all. Neither does the clause anent loss of office, show, that only Magistrates were in the view of the Legislature, no more being thereby intended, than that the offenders should lose their office, whether it is an office of Magistracy or any other whatsoever.

The Lords adhered.

No. 6.

Whether the penalties in the act 1701, reach other persons than Magistrates or officers of the law?