

juratory caution, and with it a petition to the Lords, desiring the reasons to be reconsidered, whereof the chief reason was, that he was imprisoned by the Government upon suspicion of disaffection; and having cleared himself of that suspicion, he could not be detained by virtue of any arrestment upon a caption for civil debt, but ought, *ante omnia*, to be put into the same state of liberty he was in when seized by the Government; and this was the ordinary practice of the Privy Council of Scotland, who never suffered any prisoner of State to be detained for civil debt; which was more necessary in the petitioner's case, because he was a stranger, having his residence in Ireland, and in no condition or capacity to find caution in Scotland; and therefore his suspension ought to be passed on such caution as he can find.

It was *answered*, There is no need in this case to consider the general point, how far a prisoner of State may be arrested for civil debt; because the defender is in a special case, in as far as being a stranger having no estate or residence in Scotland, and yet having accepted a bill, payable at Dumfries in Scotland, if he be set at liberty without sufficient caution, the sum would be lost to the charger; and albeit, by the common course of diligence, parties are at liberty till caption be raised on bonds, bills, or decreets, yet in special cases, where parties are lurking, or are strangers, the Lords are sometimes in use to give warrant to secure such parties, for preserving the just interest of lawful creditors, unless they find caution *judicatum solvi*. And no case can be found more favourable than this, the bill being accepted payable in Scotland, and the party a stranger, ready to withdraw his person long after the term of payment of the bill, and ultimate diligence upon it.

'THE LORDS adhered to their former interlocutor allowing suspension to be expedite on sufficient caution only.'

Dalrymple, No 155. p. 214.

1738. June 16.

PRINGLE *against* KENNEDY.

ONE constituted factor by a foreigner for levying debts due to the foreigner here, having insisted in name of his constituent for payment of a debt which, during the course of the process, was proved to have been already paid to the foreigner himself; the LORDS found the factor liable in expenses; though it was urged as quite unprecedented, that agents or factors, whether for natives or foreigners, should be found liable for expenses occasioned by their constituent's fault; that the proper remedy when a foreigner gives mandate to pursue, is to insist for caution, *in initio litis*; and where that is omitted, the defender has himself to blame. See APPENDIX.

Fol. Dic. v. 1. p. 324.

*** In the same manner was decided the case of Horn against Robertson, 1739, July 25. See also APPENDIX.

No 3.

ferred a bill of suspension on sufficient caution, which was passed, and thereafter offered a new bill on juratory caution. The Lords allowed the suspension to be expedite on sufficient caution only.

No 4.