

in order to trial than is necessary for conviction of the party accused; and, if the informer acted *bona fide*, and upon any plausible ground of suspicion, he is not to be found liable in damage, though the person should be acquitted; for, when men are robbed, they are not to be put in terror of damages, and thereby to be restrained from taking the legal method of obtaining redress.

Kilkerran, p. 160.

No. 8.

1748. June 23.

PHILP *against* MAGISTRATES OF EASTER ENSTRUTHER.

A person imprisoned without a written warrant, is entitled to damages, although there were a sufficient ground of commitment.

Kilkerran. D. Falconer.

No. 9.

* * This case is No. 37. p. 13953. *voce* REPARATION.

1752. June 3. Ross *against* JAMES and WILLIAM ROSE.

William Ross, late clerk to Mowat and others, the Banking Company at Aberdeen, was committed prisoner to the tolbooth of Aberdeen, upon a warrant by the Magistrates, proceeding upon a complaint in name of James and William Rose, who had joined as cautioners in a bond with Ross for his fidelity as clerk to the Company, to the extent of £700 Sterling, representing that he had embezzled £400 of the Company's money, and craving he might be imprisoned till he should find caution for their relief. And he being brought before the Magistrates, and alleging that part of the £400 amissing had been employed in trade with the Company's allowance; and as to the residue thereof, owning he could give no account what had become of it, the Magistrates gave warrant for his imprisonment, till he should find caution *judicio sisti et judicatum solvi*.

Ross applied, by bill of suspension and liberation, to three Ordinaries in time of vacance, Murkle, Kilkerran, and Shewaltoun, on this ground, That this summary imprisonment was for a civil debt, and therefore unwarrantable.

But the Ordinaries were not of that opinion. They considered it as a crime in the clerk to embezzle the Company's money, and therefore refused the bill, but restricted the caution to caution *judicio sisti*.

Upon the sitting down of the Session, a new bill was presented to Lord Elchies Ordinary on the bills, who reported the case, and stated the only doubt to be, How far the application was competent to the cautioners? For he made no doubt, but that the Company might have applied for the warrant as for a crime.

No. 10.

Summary imprisonment of a clerk to a company for embezzlement of company's effects, at the instance of his cautioners.

No. 10. But the Lords, upon reasoning the case among themselves, found it no less competent to the cautioners for his fidelity, than to the Company, to make the application; and therefore the prayer of this new bill, which was to find the imprisonment irregular, and to grant warrant for his liberation, or at least to liberate on juratory caution, was refused; and the bill only appointed to be passed on his finding caution in common form for the sum of £200 8s. 2½d. Sterling, in respect the cautioners had now compounded the Company's claim for that sum.

Kilkerran, No. 2. p. 618.

No. 11.

A person in suspicious circumstances may be imprisoned, though no information has been lodged, that the crime of which he is suspected has been committed.

A public officer is to be judged of favourably, when acting *bona fide* in the discharge of his duty.

1793. February 7. JAMES HENDERSON *against* WILLIAM SCOTT.

On the 13th November 1788, a reputable jeweller in Edinburgh sent information to the office of the Sheriff-clerk, that a valuable diamond-ring had been left at his shop by James Henderson, a person of a mean appearance, who might be suspected of having got it by dishonest means, and who had promised to return at a certain hour, to get his opinion of its value. Henderson was in consequence apprehended, and brought before the Sheriff, when being examined, he declared, that on his return from London, where he had been for some time a menial servant, having occasion to stay some days at Berwick, he bought the ring there for 7s. 6d. from a glazier's apprentice, whose Christian name was Thomas, but whose surname was unknown to him. He was confirmed in this account of the matter by another person who had been present at the purchase.

Mr. Scott the procurator-fiscal suspecting the truth of this story, applied for a warrant of commitment, which was obtained, and put in execution. On the same day he wrote to the Mayor of Berwick, making enquires concerning Henderson's story. By return of post, he received an answer, by which it appeared, that Henderson had told the truth, and he was in consequence immediately liberated.

Henderson then commenced an action of wrongous imprisonment, oppression and damages, in which he called as defenders the Sheriff-substitute, the jailor, and Mr. Scott, and founded both on the common law and the act 1701. But at an early stage of the process he consented, that the jailor should be assoilzied, and limited his conclusions against the other defenders to a claim of damages at common law, in which he

Pleaded: A Magistrate is not warranted to grant, nor a public officer to apply for an order to apprehend, and still less an order to incarcerate, for a criminal cause, without previous knowledge, or at least credible information of a particular offence having been committed. Where this has been obtained, the officer of police must indeed be allowed a considerable latitude in proceeding against whatsoever person, any, even slight, if probable grounds of suspicion fall; and if in this way an innocent person shall suffer confinement, it is an injury which must