

1750. *January 3.* *ANDERSON against ORMISTON and LORRAIN.*

No 38.

A CREDITOR who had given orders to his agent at a distance, to do diligence for recovery of his debt, the agent having made application to the Sheriff, setting forth, that he was credibly informed the debtor was embezzling his goods, and preparing to fly the country, who thereupon, without farther inquiry, granted warrant to sequestrate and roup the goods; both the creditor and his agent were found liable to the debtor in damages and expenses, although it was urged for the creditor, that he trusted to his agent taking no steps but what were legal; and for the agent, that he had done nothing but *auctore Pratore.*

Fol. Dic. v. 4. p. 226. Kilkerran.

*** This case is No 33. p. 13949.

1756. *January 27.* *MURRAY against MANSFIELD.*

No 39.

MANSFIELD having commenced a pointing of the shop-goods of his debtor Jackson, Morton, another creditor, offered to point in the same shop, and being prevented by Mansfield, on the pretext that he could not come in upon a pointing already inchoated, Morton's messenger retired, after taking protest, 'That he meant only to point such part of the debtor's goods as Mansfield had not pointed, and only to conjoin with him in pointing the common debtor's effects; and therefore protesting, that as he was stopped in his lawful procedure, Mansfield should be liable for the debt due to Morton.' It was agreed, that this was a deforcement sufficient to infer damages, but it was doubted to what extent; Mansfield's debt was five times greater than Morton's; the quantity and value of the goods was distinctly ascertained by Mansfield's execution of pointing; and the doubt was, whether Morton should draw from him the one half, or only a rateable proportion according to the extent of their respective debts. THE LORDS found Mansfield liable for a rateable proportion only, deducting the expense of pointing.

Fol. Dic. v. 4. p. 232. Sel. Dec.

*** This case is No 52. p. 10537, *voce* POINTING.

1761. *November 18.* *LESLY against PRINGLE.*

No 40.

DAVID and James Lesly accepted a bill for L. 39 to Pringle; and the latter obtained decret for the debt, on which he raised horning and caption. A

No 40.

A payment was thereupon made of L. 24 to account ; but notwithstanding thereof Pringle put his caption in execution, and James Lesly was imprisoned and booked for the whole debt, without any deduction for the payment. Being liberated on the act of grace, he pursued Pringle in an action of oppression and damages. *Urged* in defence, The pursuer had suffered no injury in being booked for the whole debt, except being obliged to pay a few shillings for liberation money. THE LORDS found the defender had acted irregularly, and therefore found him liable in damages, which they modified to L. 15 Sterling.

Fol. Dic. v. 4. p. 227.

* * * This case is No 37. p. 11749, *voce* PRISONER.

S E C T. VIII.

Negligence in Office.

No 41.

1624. July 20.

BELL *against* BAILIES of DUNSE.

IN an action at the instance of John Bell, against the Bailies of Dunse, for payment of L. 1000, addebted to him by his debtor, because they suffered his debtor to escape out of their ward, wherein he was incarcerated, being apprehended by letters of caption, by a messenger, who presented him to their jailor, which jailor received him from the said messenger, and put him in ward, and kept him therein, by the space of divers days ; this action was not sustained against the Bailies ; for the rebel not being offered to the Bailies, nor commanded by them to be received by the jailor, nor the rebel's warding ever intimated to the Bailie's selves;—the LORDS found, that the Bailies were not obliged ; albeit it was alleged, that they should be answerable for their jailor ; and therefore the action was not sustained against them, but they were assoilzied.

Act. ———.

Alt. *Belsher.*Clerk, *Hay.*

Durie, p. 140.

No 42.

1680. November 17.

OGILVIE *against* RIDDEL.

The clerk of the bills found liable for that part of a sum for

OGILVIE of Logie pursues Walter Riddel, that he expedie a bill of suspension, as substitute clerck to the bills, at the instance of three suspenders, and took but caution for two. The defender *alleged*, That there was nothing of design here, but inadvertance only ; and that the writers who draw the bills of sus-