

*Act.* Ilay Campbell, J. Swinton. *Alt.* A. Wight. *Diss.* Barjarg, Stonefield, Elliock.

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1768. *February 24.* KATHARINE TAILOR *against* WILLIAM WRIGHT.

## PRISONER.

One in Prison for a fine, damages and expenses, *ex delicto*, not entitled to the benefit of the Act of Grace.

[*Faculty Collection, IV*, p. 129 ; *Kaimes's Select Decis.* p. 334 ; *Dict.* 11,813.]

MONBODDO. This case is well stated, and determined by Voet against the pursuer.

KENNET. Will's case cannot aid the pursuer ; for part of Will's sentence was to ask pardon at the church door, which he could never do, so long as he remained in prison.

JUSTICE-CLERK. The case of *Malloch* is strong ; *there* the king's pardon was found not to give the benefit of a *cessio* to those who were committed to prison for payment of damages arising from delicts.

GARDENSTON. The aliment is only by statute ; and there is nothing in the statute which makes creditors liable to aliment persons in the condition of Katharine Tailor, imprisoned for damages the consequence of a delict.

COALSTON. Were it not for the train of decisions, I should have had doubts as to the interpretation of the statute.

PITFOUR. The question is, Whether this damage arose from a crime or from a fault, *levis* or *levissima* ? If from a fault, Whether that *fault* is to be considered as a *crime quoad* its consequences ?

On the 24th February 1768, The Lords found Katharine Tailor not entitled to the Act of Grace, adhering to the interlocutor of Lord Kennet.

*Act.* A. Murray. *Alt.* A. Rolland.

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1768. *March 1.* MARY VEITCH *against* ALEXANDER PRINGLE.

## SERVICE AND CONFIRMATION.

An elder brother intromitting with the effects of the younger, on his death ; found to have vested in himself a provision, with which he was burdened.

[*Faculty Collection, IV*, p. 343 ; *Dictionary*, 14,401.]

MONBODDO. I consider the Commissary Court as a relict of popish tyranny. The clergy supposed that they had a right in testaments, and a jurisdiction concerning them : this right of jurisdiction was, by degrees, diminished. It was an excellent law which made confirmation not necessary. We have got into