Judgment of the Court below accordingly *reversed*. July 6, 1814.

Judgment.

Agent for Appellant, GRANT.
Agent for Respondent, RICHARDSON.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

ANDREW—*Appellant.*
MURDOCH—*Respondent.*

Nov. 29, Dec. 8, 1813; May 24, June 9, 29, 1814.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

In an action for wrongous imprisonment on the statute of 1701, cap. 6, the date marked on the petition praying to be admitted to bail is not to be taken as conclusive evidence as to the time when the petition was actually delivered; but evidence may be given to show the real and actual time of the delivery, though contrary to the date marked on the petition itself.

The act of 39 Geo. 3, cap. 49, made no alteration in the act of 1701, cap. 6, as to the time within which, in bailable offences, the bail must be cognosced; the only alteration being as to the amount of bail that may be demanded: and the statute of 1701, cap. 6, not being in any degree to be repealed by inference or implication.

Thus, where, in an action on the statute of 1701, cap. 6, for wrongous imprisonment, an undated petition for liberation on bail was alleged in the summons to have been delivered on July 2; and no deliverance given upon it till the 9th, which day was marked in the petition, and therefore, as had been contended, must be taken as the day on which it was delivered, the Pursuer offered to prove, by evidence written and parole, that the petition was presented on the 2d; and the House of Lords—in opposition to a judgment of the Court of Session—held, that evidence as to the true

Nov. 29, Dec. 8, 1813; May 24, June 9, 29, 1814.

time of delivery might be received, in contradiction to the date marked on the petition.——

Lord Eldon (Chancellor) also—in opposition to the opinion of a majority of the Court of Session—intimating a clear and decisive opinion, that the act of 39 Geo. 3, cap. 49, made no alteration in the statute of 1701, cap. 6, as to the time within which prisoners for bailable offences must be liberated on bail; and stating, that he could not conceive how it ever came to be imagined that the act of 39 Geo. 3 made any alteration in that particular, or to be thought that so important a part of so important a statute could be repealed by inference.

Several important points being involved in the cause, which the Court below had not under consideration, it was remitted for review generally, with a declaration as above respecting the admissibility of evidence to prove the true time of delivering the petition.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Action for wrongous imprisonment, Nov 1800.

THIS was an action for wrongous imprisonment, by *Andrew*, a shoemaker in the village of Maybole, in Ayrshire, against *Murdoch*, late Sheriff-substitute of that county.

Summons.

The summons, after reciting the clauses respecting bail and the pains of wrongous imprisonment in the act of 1701, cap 6,* stated, that in June, 1800,

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Stat. 1701, cap. 6. Clause respecting bail.

* "That it shall be lawful for the prisoner, or person ordered "to be imprisoned, to apply to the committer, or Commissioners "of Justiciary, or other Judge competent for cognition of the "crime, and offer to find caution, that he the said prisoner, or "person ordered to be imprisoned, shall appear and answer to "any libel that shall be offered against him for the crime or "offence wherewith he is charged, at any time within the space "of six months: and that under such a penalty as the said "committer, or the Lords Justiciary, or other Judge compe-"tent, shall modify and appoint; and that upon the said appli-"cation, the said committer, or Lords of Justiciary, or other

a petition had been presented to the Sheriff-substitute, charging the Pursuer and one Ramsay, a cartwright in Maybole, with sedition and administering unlawful oaths, and praying for a warrant to apprehend them; that on the 30th of June the Defender (Murdoch) accordingly granted a warrant for incarcerating the Pursuer in the tolbooth (gaol) of Ayr, and refused to admit him to bail, although bail was then offered.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

It was stated, with apparently more accuracy, in

" Judge competent, shall first cognosce whether the crime be
" capital or not, in order to the finding bail allenarly; and if
" found liable, that he or they shall be obliged to modify the
" sum for which the bail is to be found within 24 hours after the
" said petition is presented to him or them respectively; the
" sum for which bail is to be found, not exceeding 6000 marks
" for a nobleman, 3000 for a landed gentlemen, 1000 for any
" other gentleman and burgess, and 300 for any other inferior
" person, under the pain of wrongous imprisonment."

That by another clause in the act, " the pain of wrongous
" imprisonment shall be, 6000*l.* Scots for a nobleman, 4000*l.* for
" a landed gentleman, 2000*l.* for any other gentleman and bur-
" gess, and 400*l.* for any other persons; and if any prisoner be
" detained after elapsing of the respective days, in manner be-
" fore described, for obtaining his liberty, the Judges, Magis-
" trates, or others, wrongously detaining him, shall be liable to
" the pains following; viz.—the sum of 100*l.* Scots for each day
" of a nobleman, 66*l.* 13*s.* 4*d.* for a landed gentleman and bur-
" gess, and 6*l.* 13*s.* 4*d.* for other persons: and farther, shall
" lose their offices, and be incapable of public trust, by and attorn
" the pains above specified, and the penalty to belong to the
" party imprisoned, and process to be competent for the same
" before the Lords of His Majesty's Privy Council, or before
" the Lords of Council and Session, to be discussed by them
" summarily, without abiding the course of the roll; and it
" is declared, that the above penalties shall not be modified by
" any power whatsoever."

Penalties of wrongous imprisonment.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

the printed case, that the first warrant on the 30th of June was for their apprehension in order to be examined; that they were examined accordingly before Murdoch, and that three other persons, Quintin M'Adam and two others, were also examined; that on closing the precognition, the Pursuer and Ramsay offered to find bail, which was refused by Murdoch, who on the same day (30th of June) granted the warrant of commitment, which was in these terms:—

"*Maybole, 30th June*, 1800.

June 30, 1800. Warrant of commitment.

"GENTLEMEN,

"You will please receive and detain in your "tolbooth the persons of John Andrew, shoemaker, "and Robert Ramsay, cartwright, both in May- "bole, accused of seditious practices, *until they* "*shall be liberated in due course of law;* for which "this shall be your warrant. And you are requested "to put these two persons into separate apartments "in your jail, that they may have no communica- "tion with each other, or with any other person, "without your liberty.

"I am, Gentlemen,

"Your most obedient servant,

(Signed) "JOHN MURDOCH.

"*To the Honourable the Magistrates of Ayr,*
"*and Keeper of their Tolbooth.*"

The summons then stated, that the Pursuer was marched under a military guard from Maybole to Ayr, and committed to solitary confinement in the gaol, where the use of pen and ink was denied him,

and all communication with his friends interdicted; that on the 2d of July, 1800, the Pursuer caused a written petition to be presented to the Sheriff-substitute, praying to be admitted to bail, and offering bail to any amount the Sheriff-substitute might please to fix; that the Defender, in direct violation of the act, (1701, cap. 6,) refused to give any deliverance on the petition within 24 hours from the time of presenting it; and that the first deliverance was on the 9th July, which deliverance was in these words:—"In regard the petitioner is duly "incarcerated *until farther examination*, and that "the precognition taken against him is transmitted "to the crown lawyers, he delays giving any deli-"verance on the petition;" that on the 12th July the Defender pronounced an interlocutor, stating, that "having now heard from the King's Counsel, "&c. he found the offence bailable, and allowed the "Pursuer to find caution, &c.;" which being done, the Pursuer was liberated the same evening. The summons concluded thus:—"By which illegal and "unwarrantable conduct the said J. M., Defender, "has not only subjected himself in damages to the "Pursuer, but has also incurred the pains of wrong-"ous imprisonment specified in the said statute; "and therefore, agreeably to the said act, and the "laws and customs of Scotland, the Defender ought, "&c. to make payment to the Pursuer in the sums "of money following; viz. 500*l.* of *solatium*, and "for damages incurred by his *wanton* conduct, to-"gether with 400*l.* Scots, and 6*l.* 13*s.* 4*d.* Scots for "each day the Pursuer was detained in prison after "the lapse of 24 hours from the time of presenting

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

July 2. Petition to be liberated on bail.

No deliverance made, nor bail cognosced, within 24 hours.

July 9, 1800.

Prisoner not liberated till July 12.

Conclusions of summons.

For damages at common law.

Penalties under stat. 1701, cap. 6.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6. Deprivation and incapacitation. Defence.

" the foresaid petition for bail, being the pains of " wrongous imprisonment inflicted by the foresaid " act, &c.; and farther, that the said Defender " should be deprived of his office, and declared in- " capable of public trust," &c.

The defence was as follows:—" That this is a " wanton prosecution against the Defender for dis- " charging his duty. The Pursuer being committed " only for examination in the course of a precogni- " tion respecting a high charge against him, he was " not entitled to be summarily released on bail. " And besides, as by his own statement the charge " against him was for sedition and administering " unlawful oaths, in which case by law * it is com- " petent for the Court of Justiciary, on application " of his Majesty's Advocate, to extend the bail to " such amount as they may think necessary, the " Defender would have been discharging his duty " very ill indeed if he had admitted to bail a person

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39 Geo. 3, cap. 49. Bail in cases of sedition.

* " That in all cases where any person shall be imprisoned " on a charge of being guilty of the crime of sedition, it shall " and may be lawful for the Judges of the Court of Justiciary, " or any one of them, on an application for that purpose, in the " name of his Majesty's Advocate, to extend the bail respect- " ively herein directed, to be taken beyond the sums above spe- " cified, and to such amount as, under all the circumstances of " the case, the Court, or any other Judge thereof, shall consider " sufficient for insuring the attendance or the appearance of the " person accused, on the day of his trial; provided always, that " nothing herein contained shall extend to deprive such person " of the other benefits of the acts above mentioned, and parti- " cularly of his forcing on the day of trial, as especially di- " rected by the Act of Parliament of Scotland, first above re- " cited."

" under so high a charge, before the public prose- " cutor could have had the opportunity of making " an application to the Court of Justiciary for an " extension of bail, had he judged that proper.— " Under protestation," &c.

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In support of the proposition that the commitment was for farther examination, the Defender referred to a certain writing, purporting to be a warrant for farther examination, annexed to the precognition, which he contended ought to be considered as the true warrant of commitment,—though the other was the warrant sent to the Magistrates. None of the Judges, however, appeared to rest much upon that allegation. But it was farther contended, that the words, " *until liberated in due course of law*," were not confined exclusively to warrants for custody in order to trial, but were words of a general signification, to be construed according to circumstances; and that the circumstances showed this to be a warrant for farther examination, to which the statute did not apply. But though it had applied, the act of 39 Geo. 3, cap. 49, must be held to have virtually repealed the statute of 1701, as to the time when bail must be modified; because otherwise the provision in question, in the act 39 Geo. 3, could not in many instances be carried into effect.

Fife and M'Larin v. Ogilvy, Fac. Coll. July, 1762.

On the other hand, it was contended, that the mandate transmitted to the Magistrates of Ayr was clearly the warrant of commitment; and that in practice the words " until liberated in due " course of law " were never to be found in warrants for farther examination. But suppose the commitment had been for farther examination, the act of 1701 applied, and the Pursuer ought to have been liberated on bail; for otherwise the whole institution of bail was an absolute farce, since the Magistrate could defeat it at his discretion, by inserting the words " for farther examina- " tion " in the warrant of commitment. The clause in the act of 39 Geo. 3 related merely to the amount of bail, and made no alteration as to the time of liberation. After authorizing the extension of bail, it contained an express proviso against the supposition that it altered the act of 1701 in other respects. It was perfectly absurd to imagine that so important a part of so important a statute could be repealed by inference and implication.

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Petition for liberation on bail not dated.

Pursuer offers to prove that it was presented on the 2d, but proof not allowed.

It also appeared that the petition praying to be admitted to bail was not dated, and there was a difference between the parties as to the time when it was presented; the Defender alleging that it was not presented till the 9th July,—the Pursuer insisting that it was presented on the 2d, and offering to prove the fact by the books in the Sheriff-clerk's office, by the Defender's correspondence with the Crown Agent, by parole testimony, &c. The Defender, however, contended, that as the petition was not dated, it must be held, *presumptione juris et de jure*, to have been presented on the day of the date of the first order or deliverance upon it,—viz. the 9th July. The Pursuer was not allowed by the Court to go into proof of the fact of presentation on the 2d.

Judgment of Court below.

After various proceedings, the Lord Ordinary, (*Armadale*,) by interlocutors of Jan. 24, Feb. 13, March 3, May 16, 1801; and Nov. 12, 1802; and the Court, by interlocutors, June 20, 1804, and June 21, 1806, sustained the defences and assoilzied the Defender, and found expenses due.

For a detailed account of these opinions, *vide* Buch. Rep.

The grounds of the opinions of the Judges, very briefly stated, were as follows,——*Newton*, *Armadale*, (Ordinary, who had changed his original opinion,) and *Meadowbank*, being for Pursuer; *Hope*, (Justice-Clerk,) *Craig*, *Hermand*, and *Islay Campbell*, (Lord President,) being for Defender,——

Hope.

The Lord Justice-Clerk (*Hope*, now President) considered the warrant as a commitment for farther examination, and that such a commitment was not bailable; but suppose it had been for custody in order to trial, the Sheriff-substitute was warranted in what he did by 39 Geo. 3, cap. 49.

Newton.

Lord Newton. It was the duty of the Clerk to have marked the date of delivery on the petition; and if he neglected, he did not know but the fact might be proved by parole evidence. The warrant did not bear to be a commitment for farther examination; but even if it were, the act of 1701 clearly applied to commitments for farther examination.

Armadale.

Lord Armadale. The time of presenting the petition might be proved by the Sheriff-clerk's books. The act of 1701 did not apply to warrants for farther examination; but this was a warrant of commitment for trial, to which the statute did apply; and the act of 39 Geo. 3 made no difference as to the time for liberation.

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Lord Craig. The act of 1701 did not apply to commitments for farther examination. This was a warrant for custody in order to trial. It was very doubtful whether the act of 39 Geo. 3 made any alteration as to the time of liberation in the act of 1701; but where there was so much uncertainty he could not decern against the Magistrate.

Craig.

Lord Meadowbank. No part of the act of 1701 can be repealed by inference, and no alteration as to the time for liberation was made by the act of 39 Geo. 3. A commitment for farther examination cannot be the ground of an application for bail. But this was clearly a commitment for trial, and the bail ought to have been cognosced within 24 hours.

Meadowbank.

Lord Hermand. The warrant was for farther examination, and the act of 1701 did not apply. He seemed to conceive that the act of 39 Geo. 3 at any rate warranted the proceeding of the Sheriff.

Hermand.

Lord President (Islay Campbell.) The statute of 1701 did not apply to commitments for farther examination. The warrant was peculiarly and anomalously expressed, and he did not recollect ever to have seen such a warrant before; but the act of 39 Geo. 3 authorized the detention.

Islay Campbell (Lord President.)

The Pursuer appealed from the decision of the Court of Session, prosecuting his appeal in *formâ pauperis*; and in the interval between that decision and the hearing of the appeal the Defender died.

Romilly and *W. G. Adam* for Appellant; *Adam* and *Nolan* for Respondent. Nov. 29, 1813.

Lord Eldon (Chancellor.) In looking at the case of *Andrew v. Murdoch*, a case of so much importance, as it had been stated to be, to the liberty of the subject in Scotland, and of so much consequence in other respects, he found that many points arose out of it which had hardly been touched upon at the bar. This was an action brought by Andrew (a shoemaker) against the Sheriff-substitute of Ayrshire, for wrongous imprisonment; and whatever might be the Appellant's situation in life, it was enough for them that he was one of His Majesty's subjects, and entitled as such to the protection of the law, and to the legal compensation, if there had been any breach of the law in his case. Sit-

Dec. 8, 1813. Important case with a view to the liberty of the subject, &c.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Duty of Judges.

ting there as Judges, they had only to consider what the law was, and whether there had been any breach of it. Whatever might be their opinion of the law, their duty was to administer it. Where alterations might be requisite, they must be made by their Lordships in the discharge of very different functions.

His Lordship then stated the difficulties which, in the consideration of the case, had presented themselves; the nature of which may be found in the five following questions, which were ordered to be argued by one Counsel on each side.

Questions which were ordered to be argued by one Counsel on each side.

1. Whether, having regard to the allegations and conclusions of the summons, any and what judgment could, according to law, be pronounced against the Defender, if he was in life, in this case, considered as a proceeding under the Act of Parliament mentioned in the summons, unless it be proved or admitted that the Pursuer's petition was, according to his allegation, presented on the 2d day of July to the Defender?

2. Whether any and what judgment could, according to law, be pronounced against the Defender, if he was now in life, for the Pursuer, considering the Pursuer as demanding a judgment in his favour, according to the laws and customs of Scotland, independently of the provisions of the aforesaid Act of Parliament, and having regard to the allegations and conclusions of the summons, and the facts of the case, and the principles upon which a proceeding demanding such a judgment is to be supported, according to such the laws and customs of Scotland?

3. Whether, if the Defender was now in life, he could, according to law, in this proceeding, be deprived of his office, and be declared incapable of public trust?

4. Whether the Pursuer was entitled by law, in one and the same proceeding, to demand damages, and likewise the sums mentioned in his summons, or other sums, as the pains of wrongous imprisonment inflicted by the said Act of Parliament; and also, that the Defender should be deprived of his office, and be declared incapable?

5. Whether, after the death of the Defender, any and what judgment can, according to law, be pronounced upon the summons, having all the conclusions for damages, and pains, and deprivation, and incapacitation; regard being had to the fact, that in the Defender's life-time interlocutors were pronounced by the Court of Session upon the merits and expenses?

W. G. Adam. 1. Judgment might be given for the aggregate sum of 400*l.* Scots, and also for the 6*l.* 13*s.* 4*d. per diem*, restricted as if the petition had been presented on the 9th; but if that restriction was not competent, at all events the cause must be remitted, for proof of the fact that it was presented on the 2d. The difficulty as to the penalties of so much *per diem* was, that, unless the *terminus a quo* were given, they could not be rightly computed; and that therefore the time was of the essence of the allegation of the offence. If this applied at all, it could only be to the penalties *de die in diem*. It could not apply to the aggregate sum of 400*l.* Scots, which was one of the pains of wrongous imprisonment. On indictment, the offence might be laid to have been committed on one day, and it might be proved to have been committed on another, if the general allegation were made out. (*Lord Eldon.* Where time was of the essence of the charge, it must be alleged.) In an action for false imprisonment, it might be laid on at a certain day, or between day and day, but they were not tied down to prove the very day in the declaration. If that was the case with respect to the aggregate penalty, why not as to the penalty *de die in diem?* as again in false imprisonment, the point of time was as important as under this Act of Parliament; and so in cases of demurrage at so much per day. But suppose this not to be English law, such an objection had never been taken in the law of Scotland. He could not find a single decision on the point; and if there had been any authority, *Blair*, (afterwards President,) who argued the case below, would have found it.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Stat. 1701, cap. 6.—Ersk. b. 4. t. 4. s. 31.—Muir v. Sharp, Fac. Coll. July, 1811.—Ersk. b. 4. t. 4. s. 89.

2. In other words, Whether judgment might not be given for the damages at common law, independent of the statute? He submitted it might. That depended on the *malus animus*, which appeared from the circumstances to have existed here. By the act, the petition must be in writing; and the Appellant was confined so as not to be able to write at all. Bail to any amount was offered, and therefore the application to the King's Advocate was only a pretence.

3. Certainly, not without the concurrence of the public prosecutor.

Sim v. Murray, Jan. 19, 1810.

4. The Pursuer was entitled to demand the penalties, and damages at common law under the same proceeding; and—the claim of deprivation of office being abandoned—they were so far

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supported by the case of *H—— v. Scott*, (Fac. Coll. Feb. 1793,) where the proceeding was for damages and penalties, to which there was no objection on the ground of incompetence, though it was restricted from want of evidence. Here, too, the summons might be restricted to the pecuniary penalties and damages, as a Defender in such a case could be in no worse situation.

H—— v. Scott, Fac. Coll. Feb. 1793.

Ersk. b. 4. t. 1. s. 14.

5. Judgment might be given against the representative only for the penalties and damages. There were two heads of actions of which Erskine gave an account,—*Actiones rei Persecutoriæ*, and *Actiones Penales* (reads the section.) The chief difference between these two branches of actions was, that where the Pursuer insisted for indemnification of real loss, the action was transmitted against heirs; whereas, actions where a demand was made by way of penalty died with the transgressor. That was the general rule,—but there was an exception; and at the close of the title, Erskine went on to explain the nature and effect of *litis contestatio*, which gave a new quality to the penal action, and rendered it transmissible.

Ersk. b. 4. t. 1. s. 69, 70.

Morrison v. Cameron, May 25, 1809.

In the case of *Morrison v. Cameron*, the Court was clearly of opinion that it did not transmit as a punishment, but that reparation in damages was a debt which transmitted like any other debt. So in *Mackenzie v. M'Kenzie*, and in *M'Naughton v. Robertson*, and in the important case of *Montgomery v. Walker*. (*Lord Eldon.* But was it said in any of the cases, that both damages and penalties transmitted?) There was no authority for both, and he put it only on the principle. Then as to the penalties:—When the offence was committed by the one, the penalty became a vested interest in the other, transmissible to his executors: and so it had been argued in *Sim v. Murray*, and also in *Gray v. Paterson*, cited on account of the able argument of *Islay Campbell*, where it was admitted that a specific penalty given by law to a private party transmitted. This was no new doctrine, that the penalty given by a remedial statute vested in this manner,—the right to recover back a sum of money lost at play by a bankrupt before his bankruptcy having been held transmissible to the assignees. These cases were cited in the Bankrupt Law as authority. But he had another ground. Standing there, he was entitled to presume that the judgment of the Court below was wrong, and to argue as if it had been in his favour; and then it was clear he ought now to have judgment as

Montgomery v. Walker, Kilk. 401.

Sim v. Murray, Jan. 19, 1810.

Gray v. Paterson, 1773.

Brandon v. Pate, 2 H. B. 308.—Brandon v. Sands, 2 Ves. 514. 1 Cooke B. L. 320.

if the property had been vested in the life-time of the Defender. (*Lord Eldon.* In action for damages on tort, verdict for Plaintiff, and new trial; if the Defendant dies before execution, however it may be in a moral view, the whole is gone. The Courts, indeed, to remedy this, are in the habit of saying in such cases, that if a new trial be granted, security must be given for the damages, whether the Defendant die or not before execution.)

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Lord Advocate. The preamble of the summons recited the statute only. The second part, or narrative, had nothing to do with the common law. No *animus injuriandi* was charged in the proper place. Not having been raised with concourse of the King's Advocate, it was from the beginning good for nothing, and could not now be amended. The conclusion of malice and damages was thrown in at the end, without any apparent intention of resting on it. It was not rested on below. There was no condescendance upon it, and no proceedings but on the statute. In the case of *Sim v. Murray*, 1810, there were two conclusions,—one for 500*l.*—another for deprivation; and the decision went thus far,—that the latter was not competent without the concourse, &c. But there they were allowed to restrict. That was in the Court below: but here the summons could not be amended, either as to addition or diminution. They could not open their mouths, therefore, with respect to the damages only, or with respect to the penalties under the statute, without the concurrence of the Lord Advocate.

Syme v. ——, August, 1765.—Darby, Feb. 1796.—Sim v. Murray, Jan. 1810.—Ray Muir.

1. The charge was, that the petition was delivered on the 2d; but the date marked on it was the 9th,—the date of the first deliverance; and this was the only evidence. The law of Scotland was jealous of parole testimony, and none could be admitted against the date on the petition. (*Lord Eldon.* Suppose it had been delivered on the 2d, and the Clerk by mistake had put the 1st, was it the law of Scotland that the Magistrate was bound by this mistake? Or if he could show the true day by parole evidence on his defence against an action of this sort, why should not others have the same advantage?) That was a strong case; but he apprehended, that though the Clerk might be punished, the Magistrate would be bound. (*Lord Eldon.* Then the Lord have mercy upon Scotch Magistrates.) As to this first question, then,

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he said, that no judgment could be given upon the summons, without concourse of the Crown officer; and even if that had been given, still no judgment could follow; the allegation being as to the 2d—the proof as to the 9th, and no amendment being now competent. With deference, he denied it to be consistent with law or practice in Scotland, that a crime could be charged on one day and proved on another, either on an ordinary summons, or on a proceeding more strictly criminal. He was informed, that the same principle was acted on here in cases where time was of the essence of the offence.

2. The summons was not one libelling on the common law, and therefore, though there had been a *malus animus*, no judgment could be pronounced upon it against the Defender.

3. There was no concourse, and the whole proceeding, coming here without amendment, was vitiated.

4. A summons might include damages at common law, and the statutory penalties; but the summons here was bad, for the reasons already stated.

5. There were two principles as to penal actions. So far as they were for reparation in damages, it had been repeatedly held that they were transmissible,—*secus*, if for punishment of the supposed offender. Here the summons was not for reparation in damages to the injured party, but a summons on the statute, merely for penalties, as a punishment on the Magistrate; and therefore there could be no transmission.

Gray v. Paterson, 1773.—Morrison v. Cameron.

W. G. Adam (Reply.) They were not too late here in passing by part of their demand, as the case was not finally decided, and the objection had never been taken below. The observation, that the law was jealous of parole testimony, did not apply here, as they had offered to prove the delivery of the petition on the 2d, not merely by parole evidence, but by the Clerk's books, &c. The *Lord Advocate* had denied that an offence could be charged on one day and proved on another. But let him look at Erskine, in his chapter on Crimes. As to the argument respecting the concourse, &c. that was putting the liberty of the subject on that concourse. The case of *Gray v. Paterson* was cited against him, but, as he conceived, without effect; as the Pursuer there gave up his claim before decision, and it became merely a proceeding

Ersk. b. 4. t. 4. s. 89.

Gray v. Paterson, 1773.

in vindictam publicam. The pecuniary penalties here were intended as compensation, which evidently appeared from their being proportioned to the degrees of the parties. Dec. 8, 1813. WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Lord Eldon (Chancellor.) The Appellant in this case having come before their Lordships in *formâ pauperis*, it was desirable that the cause should not be sent back again, if that could be prevented. The case had been very ably argued on both sides, and it might be proper to take a short time to consider it before they came to a conclusion. They could not blame themselves for having it re-argued, as many important points were now opened, which had not been adverted to below. May 24, 1814: Observations in Judgment.

The original proceeding, to which he knew nothing analogous in the law of England, was by a summons concluding both for damages at common law and pecuniary penalties, with deprivation of office, and disqualification during life, under a statute; and the consequences therefore would have been very serious indeed to the Defender, if the decision had gone against him. It certainly had occurred to him as singular, if the law of Scotland really did allow such a proceeding. But, after what he had heard, he could not take upon him to say, that, with the concurrence of the King's Advocate, a proceeding of that description might not be competent. It was contended, however, and with considerable effect, that the summons could not here be restricted to damages at common law merely; also, that the conclusion for deprivation and disqualification could not be supported, unless the King's Advocate had been called in; and that, unless the King's Advocate had been called in, even the pecuniary penalties of the slump sum, and so much for each day, could not be recovered. But the question as to the concurrence of the Lord Advocate was very different when considered with a view to the loss of office and disqualification during life, from what it was when considered with regard to the pecuniary penalties given by the statute to the party imprisoned. Summons.

Their Lordships had heard much as to the time when the petition had been presented; and he would recommend it to such of them as had particularly attended to the cause, to give a good deal of consideration to that point. True, the Appellant had offered to prove that the petition was delivered on the 2d, and had stated the *media* of proof; but it was argued, that such proof Date of the delivery of the petition for bail.

May 24, 1814.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

could not be admitted against the date marked on the petition. He had before felt a difficulty as to that; which was still far from being removed. Suppose the party had put a wrong date on the petition, would that bind the Judge? Suppose the Clerk had marked the date, and had put the 1st instead of the 2d, would that be so powerful that the fact of the mistake could not be proved, and that the Judge must be shut out from that proof against an action for damages at common law,—against an action for the pecuniary penalties under the statute,—and against a prosecution for deprivation and incapacitation? If that was so clear, that running they might read it, they could not help it; or they must help it in another way. But he had hitherto heard of no authority to show that such was the law. It must then be considered, whether the fact, that the petition was delivered on the 2d, could be got at without remitting the cause.

No authority stated to show that the real time of delivering the petition might not be proved in opposition to the date marked on the petition.

Points to be considered.

Reference had been made here to the not passing from the alleged incompetent part of the summons in the Court below, and a question had arisen, whether their Lordships could now pass from it; and whether they had not the power to do so, since the objection as to the competency of the summons had not been taken below, and therefore the amendment not made there; and also as to what effect the death of the original Defender must have upon the suit.

These were points for consideration; but he could not help expressing his regret, that a matter so plain as this appeared to be, both as to fact and law, should have been the subject of such a long and complicated litigation. The fact was, that the Appellant had been arrested for a bailable offence. If the petition praying for liberation on bail was presented on the 2d, a deliverance ought to have been made upon it within 24 hours from that time: and, with all due deference to the opinion of the Court below, he could not but say, with more confidence than he usually felt on such occasions, that he could not possibly imagine how it came to be thought that the act of 1799 (39 Geo. 3, cap. 49) made any alteration as to this point. The alteration related merely to the amount of bail, but the party was not to be kept in prison longer than before; and the act of 1799 could not have the effect of authorizing a longer confinement, unless that had been the subject of special enactment. If the statute for the prevention of wrongous imprisonment was attended with incon-

Act of 39 Geo. 3, cap. 49, made no alteration in stat. 1701, cap. 6, as to the time within which prisoners committed for bailable offences are to be liberated on bail.

venience in its operation,—(he did not feel that it was,)—that inconvenience was not to be removed by inference. What was to be done with this case must be the subject of farther consideration; but, after having already thought much upon it, he should have been sorry to part with it, without even now stating, that he thought the Appellant had very considerable reason to complain.

May 24, 1814.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Any supposed inconvenience in the stat. of wrongous imprisonment not to be removed by inference.

Appellant had considerable reason to complain.

June 9, 1814. Observations in Judgment.

Lord Eldon (Chancellor.) This was an action on the statute of wrongous imprisonment, (1701, cap. 6,) which was considered to be as valuable for the protection of the liberty of the subject in Scotland, as the *habeas corpus* act was in England. A proceeding therefore founded on an alleged violation of this statute was entitled to their Lordships' particular attention. (After stating the facts and previous proceedings at length, his Lordship continued.) Their Lordships could not be much surprised after this statement if they still found themselves under a very great difficulty in getting at the real justice of this case. It had been contended at the bar, that the summons was one which proceeded entirely on the statute, and that it contained no allegation libelling, as they called it, upon the common law; yet the conclusions were for penalties under the statute, and for damages at common law. The way in which the *Lord Advocate* put it was this:—The summons not being one which libelled upon the common law, no judgment for damages at common law could be given upon it; and as to the penalties under the statute, he (*Lord Advocate*) insisted that the subject could not have the benefit of that statute without the concur-

Summons—whether entirely on the stat. of 1701.

Whether concurrence of Crown officer necessary in actions on stat. of 1701.

June 9, 1814.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

rence of the Crown officer,—a proposition which would require a great deal more consideration than to be satisfied with the mere assertion. But their Lordships would find it farther contended, that this Court (House of Lords) could not alter a summons, but must take it as it stood. It had been stated at the bar, that in the Court below they might pass by part of a summons; but it had been farther argued, that if a cause came here by appeal upon a summons joining competent with incompetent conclusions, the summons could not be in part passed by in this Court of appeal; but the judgment to be given upon it must be only such a judgment as the Court of Session could have given, if no part of the summons had been passed from. Though an anxiety, and a proper anxiety, prevailed among their Lordships, to come to a final conclusion on this subject, it was however very difficult for them to do so, where they stood in circumstances in which they were called upon to decide important points in the criminal law of Scotland which had not been considered and decided upon in the Court below.

Whether an incompetent part of a summons could be passed from in the House of Lords in the first instance.

But there were two or three points arising out of this case which deserved their Lordships' particular attention. If they rightly understood the proceedings in the Court below, (and they ought to be able to understand them, considering the assistance they had had at the bar,) the interlocutors involved this proposition,—that where a person imprisoned for custody in order to trial applied under the directions of the act of 1701 to be liberated on bail within 24 hours of the date of presenting the petition to that

Date of the delivery of the petition for bail.

effect, if it happened that a date, not accurately stating the time at which the petition was delivered was marked upon it by the Magistrate or the Clerk, it was of necessity that they were bound down by the positive rule of law to take the date so put as denoting the true day upon which the petition was delivered; and that no evidence could be admitted in behalf of his Majesty's subjects to show that the date so marked was not the true date of the delivery of the petition. He had found it very difficult to convince himself that such was the case; for if it were so, their Lordships would consider what must be the condition of the Magistrate himself. It might be *usual* for the Clerk to put the date of delivery upon the petition; but it had not been averred to them, that it was his duty to do so:—but suppose it had been his duty,—for God's sake, if an action were brought against the Magistrate upon the statute of wrongous imprisonment, under which he was liable in the payment of a large pecuniary penalty for each day of confinement beyond 24 hours from the time of presenting the petition, and exposed besides to the loss of office, and perpetual disqualification,—could it be contended, that in such a case the Magistrate would be bound down by a mistake of the Clerk? But justice must be administered with equal scales. If the subject could not have the benefit of the blunder as against the Magistrate, the Magistrate could not have the benefit of it as against the subject. This proposition therefore it appeared to him quite impossible to sustain, upon any principle that he could understand.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Difficult to believe that the date on the petition, though erroneous, was to be conclusive. Condition of the magistrate himself, if such were the law.

Impossible to sustain the proposition, that the date marked on the petition was conclusive.

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WRONGOUS IMPRISONMENT.—STAT.-1701, CAP. 6. Warrant.

But it had been said, that this was not a warrant of commitment for custody in order to trial, but a warrant of commitment for farther examination; and a great deal of argument had been used to induce their Lordships to believe, that a warrant which bore to be for custody "*until liberated in* "*due course of law*" might be understood as a warrant of commitment for farther examination. Even in the law of England he had found more authority for correcting the conclusion of a warrant by the subject matter of it than he had at first been aware of. Their Lordships, however, would look at the fact in the present case. This might turn out not to be a warrant of commitment for farther examination, and it might not be a warrant of commitment for trial. But if it could not be considered as a warrant of commitment for farther examination, he doubted whether the Magistrate could be heard to say, that it was not a commitment for custody in order to trial.

The Magistrate had fallen into the mistake—he should be sorry to speak harshly—of supposing that the late act (39 Geo. 3, cap. 49) authorized him to confine persons charged with this species of offence till a correspondence could take place with the King's Advocate from all parts of Scotland. He did not say whether this would be a reasonable enactment; but it was difficult for him to conceive it to be so reasonable as to induce him to believe that such was the meaning of the act, unless he found that meaning clearly there expressed. There was a mode of construing the act, which appeared

Act of 39 Geo. 3, cap. 49.

to him to be rational, without resorting to any such meaning; and therefore he should say, that it contained no such enactment. Where the exigency of the statute occurred, the Lord Advocate, with the aid of the Court, or of a Judge of Justiciary, might say, 'Under the authority of this act, I direct 'bail to a greater amount to be taken.' But it never could be contended, that because a power was given under this statute which might be rationally exercised as above stated, the consequence should be a repeal of the whole benefit of the act of wrongous imprisonment, in every case where the necessity existed for a distant correspondence.

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

It never could be contended with success, that the power given by the act of 39 Geo. 3, cap. 49, to extend the amount of bail in cases of sedition, operated as a repeal of the stat. of 1701, cap. 6, as to time within which the bail must be cognosced.

Then it appeared to him, that the proper mode of dealing with this case, considering the important points of Scotch law involved in it which had not been under consideration in the Court below, would be to remit to the Court of Session to review the interlocutors generally, but with a declaration as to the point of the date of the delivery of the petition; for till that was fixed they could come to no conclusion upon two other points, one of which was essential, the other extremely material. Whether there was any undue delay in giving a deliverance on the petition was essential; and it was a very material point, whether the laying the time was not here of the essence of the allegation of the offence.

These were most important considerations, with reference to the condition of the Magistrate himself; but it ought never to be forgotten, that in the case of every individual, the act for preventing wrongous imprisonment must be so construed as to give to

Proper mode of construing the stat. of wrongous imprisonment.

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that individual, be he high or low, rich or poor, the benefit which under that statute belonged to all.

Lord Holland. Partly from accident, and partly from the interesting nature of the subject, I have attended this cause throughout, and listened patiently and anxiously to all the proceedings before the House. I do not, however, rise for the purpose of giving any opinion on the decision which your Lordships must adopt. Had I disagreed with the noble and learned Lord on the woolsack, I should, from consideration of his great legal knowledge, and the professional habits of his life, have hesitated long ere I felt myself warranted in giving the party in whose favour I so differed the benefit of my opinion and vote;—but I am relieved from all such difficulty. After the maturest reflection, I concur in the noble and learned Lord's conclusion; and I concur in it nearly, though not entirely, upon the same grounds as those stated by his Lordship. The House will not suspect me of the presumption of hoping to enforce arguments which he has urged with such eloquence this day. Nothing after his luminous statement and powerful speech can be uttered to give additional reason or authority to your Lordships' decision,—nor am I vain enough to attempt it; but there have been other circumstances brought before our view, on which I wish to say a few words, addressing myself to your Lordships in your capacity of legislators and guardians of the law, rather than in that of Judges. It has already been remarked, that this is a cause of importance, both as it affects the Magistracy and the people of

Scotland. It is so especially, inasmuch as the construction and efficacy of the most anxious statute in the book of Scotch law depend upon some of the questions which have been raised in the course of it. I call the act of 1701, at the risk of a barbarism in language, an *anxious* statute; because every line of it betrays the anxiety of the Scotch legislature of that day to guard against unnecessary and oppressive, or, as it is termed in the law itself, wrongous imprisonment of the subject. In the face of such a statute, in defiance of that anxiety, it is painful, indeed, to be compelled to send back the Appellant without any redress or compensation; but owing to the mixed and incongruous manner in which the charges are drawn, to that conclusion I fear we must come. The forms and proceedings of justice require it, whatever we may think would have been our judgment had the facts and the law have been brought before us in a more regular shape. The forms of justice are not, and cannot safely be, dispensed with. Though but the rind of the tree, they are necessary to convey its nourishment and sustain its growth, and to protect its substance from injury and decay. Nor is it form only, but substantial justice requires us, sitting here as a Court of appeal, not to determine points on which the Courts in Scotland have pronounced no decision. But while you must act as Judges, your Lordships must feel as legislators, or as men; and you cannot shut your eyes to the facts of a case, or fail to lament that in this instance an act of glaring oppression has occurred, and at the end of 14 years the party ag-

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grieved must be sent back to the Court of Session for that redress which, while the events were recent, and the means of proof at hand, he was not permitted to obtain. That a man has been wrongously imprisoned is clear; that the common law of Scotland grants damages for wrongous imprisonment seems admitted; that the statute of 1701 inflicts severer penalties is still more incontrovertible; and yet this unfortunate Appellant, having sued for redress in various Courts, and appearing at your bar in *formâ pauperis*, must now be sent back to recommence his suit, when lapse of time, which has removed by death the person against whom his action was brought, may possibly have extinguished his witnesses too, and thus have deprived him of the means of obtaining at last that redress to which, from the facts of the case, it is manifest he was legally entitled. How has this happened? From negligent administration of justice, or from some defect in the law itself? If from the former, Parliament should punish those who have neglected their duty; if from the latter, inquiry should be made into the nature of the laws themselves, for the purpose of revising and correcting their defects.

The act of 1701 inflicted several penalties on those who imprisoned any of the subjects of Scotland *wrongously*. The nature of these penalties have been frequently explained,—1st, a certain sum *de die in diem*; 2d, what was called the slump, or aggregate sum; and, 3d, loss of office, and disqualification from holding any situation of public trust whatever;—a severe punishment,—one of the se-

verest that can be inflicted; for nothing can be more cruel, as I have often contended on other occasions, (which being of a political nature I shall not now dilate upon,) than to disqualify a man from the service of his Sovereign and his country. It has been argued, that these penalties, though inflicted by statute, cannot be recovered without the *concourse*, that is, the concurrence and intervention of the Crown officers in Scotland. This is an important question indeed, and the House is not prepared on the sudden to declare what is the law of Scotland upon it;—and here I must regret, that a regulation, once suggested, I believe, by a committee, has never been adopted:—I mean the attendance of two Scotch Judges, by rotation, during each session of Parliament. Their assistance would promote the ends of justice in all questions of Scotch law, and the House would not, as now, be compelled to take so much time for the purpose of referring to other authorities, or collecting the law exclusively from the statements and arguments of Counsel at the bar. *We* might learn the maxims and practice of Scotch law from them; and from our conduct, even in the anxiety shown to ascertain that law, may I be permitted to add, that *they* might learn something from us. This House, as a Court of Judicature, does not consider what might or ought to be the rule of law, but regulates its decisions by what is actually so. We know of no "right reason which "is paramount to Acts of Parliament;" but hold it our duty to be guided exclusively by the common and statute law of the land. The Scotch Judges

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might profit by such an example; and, unless they are belied by a publication which I shall notice presently, they stand in great need of the lesson. One of them is represented, I hope untruly, as boasting, that he did not judge by law, but by what he is pleased to term "right reason," which, he adds, is "paramount to all Acts of Parliament." If such be their language, while by their attendance here they might enable us to ascertain the law of Scotland on many points, our example might teach them not to set up the authority of their own "right reason" against the law which they have sworn to administer. In all judicial cases, whatever we may think of the law, by it, and by it only, must we decide. Circumstances, however, may come before us as Judges, which may suggest many useful considerations to us in the character of legislators for the correction of abuses, and general improvement in the administration of justice. I think some have arisen in this cause. I know not whether all or none of the penalties under the act of 1701 can be recovered without the concurrence of the Lord Advocate. In either case, it appears to me the law requires revision and explanation. On the one hand, it is perhaps unreasonable to expose a Magistrate to so severe a penalty as privation and disqualification from all office of trust at the suit of an individual; and though in flagrant cases such punishment might be inflicted, it ought perhaps to be at the suit of the Crown alone such consequences so highly penal should attach. On the other hand, the whole of that excellent statute, by which the

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Scotch legislature meant to secure the liberty of the subject by provisions yet stronger than those of our *Habeas Corpus*, would be rendered nugatory, if none of the penalties under the act could be recovered but by the intervention of those persons in authority who, in all likelihood, especially in charges of sedition, would be the chief instigators of the wrong, and therefore the last persons whose concurrence should be thought necessary in seeking to redress it. If the law grants the pecuniary penalties, and not the disqualifying punishment, at the suit of the individual, that law ought to be ascertained and promulgated by a declaratory act, if necessary. If that be not law, a statute should pass to make it so; and the recovery of the sum *de die in diem*, and still more that of the aggregate sum, called *solatium*, and partaking of the nature of damages, should be rendered easy, and in no way dependant on the will of any Magistrate or lawyer in office or authority.

The decided opinion of the noble and learned Lord on the construction attempted to be put on the 39 Geo. 3, cap. 49, has given me great satisfaction. It is such as I should have expected from *his* accurate mind, and renders all farther comment unnecessary. The argument, that such an act can, by inference and a side wind, defeat the intentions and repeal the provisions of the act of 1701, (though some stress was laid upon it in the Court of Session,) is, I am happy to hear from the noble and learned Lord, not to be maintained for a moment. It would be idle to waste one word to expose its futility. The act of 1799 has left the provisions of 1701

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where it found them; with this exception only, that at the instance of the Lord Advocate, the Court may exact a larger amount as bail in cases of sedition, than under the old act it could have done. And here I wish to say a word on that act, not as it affects this cause, but as it affects generally the liberty of the subject, and the consistency of our legislation. "Justice," said the learned Lord, "must "be administered with *equal scales;*" and laws, I venture to add, should be made on equitable principles also. Yet I find this act of 1799, (framed, by the by, at a time when the learned Lord had many cases of sedition, or, at least, that were so called, on his hands; a time which I look back upon as a most unhappy period in legislation)—I find, I say, this act giving a power to exact a greater amount of bail from persons accused, but not extending the sum to be inflicted as penalty on the Magistrate in case of wrongous imprisonment. Yet in the preamble I find the motive, or at least one of the motives, for this change, was the "difference of "times." That, I presume, means the difference of the value of money. But is there more difference in the value of money given as bail than the value of money paid as penalty? If that difference is a good reason for a change in one case, it is in the other; and the act as it now stands is a partial law, an unequal, a *lopsided* measure, where the argument is granted in favour of the Magistrate, and denied in favour of the subject. A moment like the present is favourable to the revision of laws, especially such as have been passed in periods of a different

character, in a period like 1799, of passion, preju- June 9, 1814.
dice, and injustice. This act, in my opinion, had better be repealed altogether; but if it remains on the statute-book, regard to the principles of justice, and even to the appearance of consistency, requires an increase of penalty for wrongous imprisonment proportionable to the increase of bail which may by that new law be exacted.

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I now come to a topic which it is painful to me to touch upon, but which, with my view of it, it would be criminal in me entirely to overlook. In the course of this cause, there have been handed up from the bar, not indeed as evidence, but for the information of the House, two books, one rather voluminous, and the other not small, purporting to be Reports of cases determined in the Courts of Scotland, and containing particularly the report of what passed in the Court of Session on the cause which is now before us. It is not necessary to observe, that in this country many learned and ingenious men have supplied the public with Reports of law cases, which, as precedents, have become the rules by which our Courts of Justice decide upon points of the greatest importance. One cannot look across this table* without having the value of this sort of publication brought to our mind. Our law, the result as it is of the experience of ages, does not disdain such assistance, and often leans on the authority of such books. But, if I am not misinformed, the volumes handed up to us are invested

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* Mr. Cowper, the Clerk of the House of Lords, published Reports.

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with a yet stronger character of authenticity. They are not the mere voluntary reports of attentive individuals. The gentlemen who publish them are actually appointed by the faculty of Advocates, that is, the bar of Scotland, to attend the Courts, and to publish the proceedings. How can we then doubt their authenticity? And yet, when I see the spirit in which the opinions of the Judges of Scotland are there represented to be delivered, I cannot help hoping that there may be some inaccuracy, some exaggeration, or mistake. Unlike the bias which is generally enjoined by law, and has at the close of his speech been this day so well enforced by the noble and learned Lord, of construing every thing in the manner most favourable to the liberty of the subject, a spirit of directly a contrary tendency, with one or two honourable exceptions,* pervades the whole of what is there reported to have been delivered from the bench. A disposition is manifested to dwell on every argument, to catch at every twig, by which the Court can be spared the dreadful mortification of granting a helpless and injured individual the redress to which he is entitled against the arm of power exercised with oppression. One Judge† is represented as saying, (and if the report is false, a grosser libel was never propagated against the character of a Judge than this authenticated book of Reports,) that the act of 1701 had been compared to the English *Habeas Corpus*, had been called the *Magna Charta* of Scotland, the palla-

Buch. Rep. 28—42.

Buch. Rep. 51.

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* Probably alluding to Lords Newton and Meadowbank.

† Lord Hermand.

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dium of civil liberty; but that he, ever since he sat on the bench, and long before, had considered it as *a galimatias of nonsense!* as an act framed with an intention of being so; that he did not care what the Act of Parliament said, but always decided according to right reason, which was paramount to all Acts of Parliament. I do not, my Lords, pretend to quote the exact words in the book, for it has been mislaid; but such I am sure was nearly the substance of what is put into the mouth of a Scotch Judge. I cannot say that they were actually pronounced by him. I have stated to the House on what evidence they rest. I will not even say, that in the shape in which we have received them they call for any Parliamentary proceeding; but I do say broadly, (and I again wish some Judges of that part of the United Kingdom were here to hear me,) that if such words, or such sentiments, had been expressed from the bench of *this* country, if, even in the common, unauthenticated, and careless newspaper reports, such a defiance of the authority of Parliament, such an open contempt of their oath and their duty, had been attributed to our Judges, and it had occurred during a sitting of Parliament, twenty-four hours would not have elapsed before some step was taken to ascertain the truth of the report, and if true, to institute inquiries into the manner in which the Judges of the land were themselves treating that law which they are appointed and have sworn to administer.

I could not therefore allow this circumstance, so brought before me, to pass without animadversion.

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If the impression made on my mind be too strong, I shall, I am sure, be corrected; but I cannot but believe that every one of your Lordships who have read or heard of this report must have felt concern and indignation at such a violation of duty and decency. If such is the language held on the bench, it is high time to appoint a committee of inquiry, and to ascertain how justice is administered in Scotland; and I only hope that your Lordships, and the learned Lord on the woolsack in particular, will not think that I have exceeded my duty in thus animadverting strongly on the strange language which has been brought before our notice. I know nothing of the learned Judge whose words I have commented upon; the duty I have discharged is a painful one: but upon my honour and conscience, I think I should have deserved reproach if, feeling as I do upon the subject, I had neglected it. On the cause I believe there is no difference of opinion; and I trust, when the learned Lord shall have framed his motion, or judgment, I shall find his opinion—that the decision of the Court of Session, on the subject of the date of the delivery of the petition, cannot be sustained—strongly expressed.

June 29, 1814. Judgment.

"It is declared by the Lords spiritual and temporal in Parliament assembled, that it is competent to the Court of Session in Scotland, in a due proceeding on account of wrongous imprisonment, to receive evidence tendered to prove the actual and true date of the delivery of the petition of the

" party alleging himself to be aggrieved by such
" imprisonment; and that the date of delivery writ-
" ten upon such a petition ought not to be taken to
" be conclusive evidence of the actual and true date
" of such delivery. And it is farther ordered, that
" with this declaration the cause be remitted back
" to the Court of Session in Scotland, to review ge-
" nerally the several interlocutors complained of;
" having in such review special regard to the nature
" of the summons in this proceeding by the Appel-
" lant alone, and its allegations and conclusions:
" and thereafter to do in the said cause what to the
" said Court shall appear meet and fit to be done."

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WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Agent for Appellant, CAMPBELL.
Agent for Respondent, LONGLANDS.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

ANDERSON, of Inchry—*Appellant.*
THOMAS, Minister of Abdie—*Respondent.*

July 4, 6, 1814.

MINISTER'S GRASS GLEBES.

DESIGNATION of certain lands for a Minister's grass glebe objected to on the grounds that there had been a payment in lieu of such grass glebe for about a century of 20*l.* Scots, (but no decree of Presbytery for it appeared on record;) that the ground was arable, and under cultivation at the time of the application for the designation; and that the lands designated were not those nearest the church. Pleaded on the other hand, that—there being no recorded