

PRISONER.

WILLIAM M'Leslie, from deadly malice, took out letters of lawburrows against John Nimmo, weaver in Kilmarnock: he executed the charge by putting a copy in the lockhole of his door after 11 o'clock at night, in such manner that Nimmo knew nothing of the affair till some days after: when, at ten in the evening, he was apprehended upon a caption, for not finding caution in the lawburrows; and though there were several royal burrows within a few miles, was carried to the Highlands, and there detained, while his friends at Kilmarnock knew not what was become of him. But hearing he had been seen at Renfrew in the custody of a messenger, they preferred a petition and complaint to the Lords, praying for a warrant to suspend the letters, and set Nimmo at liberty.

Upon this petition, the Lords found M'Leslie and the messenger liable in £35 of damages and expenses, and a fine of 100 merks, and ordered M'Leslie to prison for a limited time, about three months, and thereafter till payment of the fine and damages.

M'Leslie applied to the Magistrates of Edinburgh for the benefit of the act of grace. The Magistrates refused it; whereupon he petitioned the Court; which petition was refused also, the Lords being of opinion, as stated in the Dictionary, "that the words in the Act of Parliament, 'civil debts' were to be understood debts arising *ex contractu aut quasi contractu*, in opposition to debts arising *ex delicto*; and that therefore, not only were penalties, properly so called, imposed for crimes, excepted from the benefit of the Act of Parliament, but that all damages arising *ex delicto* are comprehended under the exception."

From looking into the papers in this case, the mode of application seems to have been irregular, for, in place of a petition, the prisoner ought to have applied by advocacy.

EDGAR *against* REID.

REID, without any title to enlist recruits, pretended to enlist Edgar, and afterwards extorted from him the sum of £30 for his discharge. In a pursuit before the Justices of the Peace, Reid was ordered to consign the £30 in the hands of the clerk of court,—was ordained to pay expenses, and fined in £5. Rather than comply, although he had the £30 in his pocket, he went to pri-

son ; and his liberation, both upon the Act of Grace and afterwards in a *cessio*, was refused.

1773. *February* . JOHN DOUGLAS against SIR JOHN STEWART.

JOHN Douglas, being imprisoned for payment of the penalties imposed by statute, for selling excisable liquors by retail without license, applied for, and obtained the benefit of the Act of Grace. Sir John Stewart, solicitor of stamp-duties, brought a suspension. Informations were ordered. But it went off without a decision, February 1773. In this case the difficulty was increased, by the privilege of Crown debts, which are said to exclude a *cessio bonorum* ; and by the danger of defeating all penalties enacted by excise laws, seeing, as the officers of the Crown have no fund for alimending such prisoners, they would all come out on the Act of Grace.

Same point occurred again, *March 1775*, Cuthbertson against Sir John Stewart.

1776. *August 8*. JOHN GORDON, Petitioner.

JOHN Gordon, being imprisoned for debt in the Tolbooth of Edinburgh, applied to the Magistrates for the benefit of the Act 1696. The Magistrates granted it ; but, for want of money to pay the fees of extracting his decret, his warrant of liberation could not be got extracted. He applied, 18th July 1776, by petition to the Lords. The Lords ordered the petition to be intimated at the town-clerks' chambers, and the clerks concerned to give in answers thereto. Answers were given in accordingly. The Lords superseded the advising for eight days, on condition that the town-clerks would continue the aliment in the meantime ; and they allowed them to give in an additional paper, if they saw fit. They did so : they gave in additional answers. The Lords, 8th August 1776, pronounced this interlocutor :—" Find, that when a person is found entitled to the benefit of the Act of Grace, and has complied with the statute, and is unable to advance the fees of extracting his act of liberation, or the other fees of court during the process, that the city-clerks, and their extractors, are entitled either to aliment the prisoner until said fees are paid, or are bound to give him his extract gratis ; reserving all claim competent to draw payment thereof out of his effects as any other creditor, and therefore, in the present case, decern in favour of the petitioner, in the terms above mentioned ; the city's clerks being obliged to continue to aliment him until his extract shall be delivered to him.