

No. 2. 1736, Dec. 14. PATERSON *against* ANDERSON.

THE Lords adhered to their interlocutor of 18th November finding it came under the act against wrongous imprisonment. Several were of a different opinion, because Anderson was no Magistrate or Judge, though overseer of a corporation or fraternity of trades; but what determined me and others was that he acted as one having authority to imprison.

No. 3. 1737, Feb. 24. RALPH ROGERS *against* RENNY.

THE Lords found that the act against wrongous imprisonment does not extend to proceedings before this Court, (which they had found in many cases of both of forgery and fraudulent bankruptcy, as Monro of Navarry, and a forger of bank-notes Haliburton, and Philip Pack.) But, in respect of both the Advocates and private parties consent, ordered him to be set at liberty on his finding caution *judicio sisti* under the pain of 2000 merks, and whatever sum shall be found due to the private party.

No. 4. 1737, Nov. 22. SUTHERLAND *against* SIR JAMES SINCLAIR.

THE Lords found the wrongous imprisonment proven against Sir James, and fined him in L.400 Scots and 50 merks for four days imprisonment, and as much more in name of damages as makes L.200 sterling, and found Sir James incapable of public trust, 12th July.—22d November, The Lords adhered as to finding that the case is within the act of Parliament and its consequences; and, 24th, restricted the L.1900 Scots to 2000 merks in case he pay within the days of the charge.

No. 5. 1739, June 6. NEILL *against* GEORGE MILLER, &c.

IN this question of wrongous imprisonment, the questions occurred, Whether a warrant could in any case be granted without a signed information? Whether, if a warrant expresses the cause, it answers the act 1701, though there were no signed information? Most of the Lords who spoke were of opinion, that in some cases it might necessarily, where the Judge gives the warrant *ex propria scientia* having seen the crime committed and expressing that in his warrant; but not where the Judge knows nothing of the crime, but by the information of others, and far less where it is only a report or private information; in which case he may give a warrant to seize and bring him before him to be examined, and may even detain him in custody till a precognition be taken, if it can be soon done; and if he cannot be safely detained otherwise, may commit him to prison till the precognition be taken; but no judgment was given on that point. As to the second we all agreed (except Kilkerran) that by the act of Parliament where the warrant was given in consequence of an information either oral or written, and not *ex propria scientia*, it is not enough that the warrant must express the cause, but there must also be a signed information. But we gave no interlocutor either upon this point, because we found that the act of Parliament was in this case obtempered by the Procurator-Fiscal's signing, though by order of the Judge; for the Lords thought the Fiscal as well as the Judge might be liable in damages.