

P R I S O N E R.

S E C T. I.

Power,—Duty,—Liability of Magistrates relative to Prisoners.

1605. *July 23.* NISBET *against* DRUMMOND.

JAMES NISBET pursued James Drummond, to pay to him a sum which was owing to him by a man whom he having warded for the same debt in the tolbooth of Saintroluston, the said James Drummond had letten him to liberty. It was *excepted* for James Drummond, That he should be assoilzied, because, that if any way he let that man forth, it was when he was deadly sick, and when the tolbooth, being ruinous and not able to keep him, was mending, and now he had entered him in as good estate as of before. It was *answered*, That it was not lawful for any Bailie to let a party to liberty, who was warded by authority of a superior Magistrate, upon pretext of sickness; and it is not enough to ward him again, because the prison is a punishment of his disobedience, and a spur to the party's satisfaction; likeas the said James Drummond took a bond of John Wairden's father, to relieve him of all skaith to be incurred for putting his son to liberation. In respect whereof, the LORDS repelled the exception.

Fol. Dic. v. 2. p. 169. Haddington, MS. No 935.

1608. *June 18.* BOYD *against* MONCRIEFF.

ANDREW BOYD pursued Sir John Moncrieff to pay to him the sum of 3000 merks, because he being charged upon letters of caption to take the Laird of Balhousie, and other cautioners for the Laird of Craigie, to the pursuer, had

No 1.

A Magistrate setting a prisoner at liberty, will not evade payment of the debt by re-incarcerating him.

No 2.

He who charges a Magistrate to take a rebel, must offer to

No 2.
go foot for
foot with him,
otherwise the
charge is
null.
See No 7.
p. 11689.

not done the same. It was *alleged* by Sir John, That the horning used against Sir John was null, because, when he was charged to take them, the officer had not offered to go foot for foot with him; which exception the LORDS found relevant. It was then *replied* by the said Boyd, That the said Sir John had seen the charge, haunted familiarly with the said rebels, and had eaten and drunken with Balhousie, and the rest of them. THE LORDS reminded of a practick, whereby the Bailies of Kirkcaldy were compelled to pay the rebel's debt, because he had haunted with them after they were charged to take them.

Fol. Dic. v. 2. p. 167. Haddington, MS. No 1467.

No 3. 1609. December 1. APPLGIRTH, Supplicant.

THE Laird of Applegirth being warded in the tolbooth of Edinburgh for debt, and having contracted sickness, desired to be transported to the town, upon caution to keep ward in the town, and to re-enter so soon as he could, or to satisfy all parties. THE LORDS found his desire reasonable, he testifying his disease by the testimonial of a doctor.

Fol. Dic. v. 2. p. 169. Haddington, MS. No 1669.

No 4. 1610. December. TOWN OF LINLITHGOW against _____.

IN a suspension pursued by the Town of Linlithgow against _____, for suspending charges used against them for apprehending rebels, the LORDS would not sustain process upon the first charge, nor find the letters orderly proceeded thereupon, notwithstanding it was *answered*, that the time of the charge the rebel was with the Bailies, and in their sight.

The like of this decided betwixt James Drummond, Bailie of Perth, and Weems.

Fol. Dic. v. 2. p. 167. Kerse, MS. fol. 227.

No 5.
A Magistrate
charged to
take a rebel,
was found
liable in the
debt, because
he had been
in company
with the re-
bel after the
charge.
See No 10.
p. 11690.

1610. December 5. VAUSS against L. CALDER.

ALEXANDER VAUSS, burgess of Edinburgh, pursues Sir John Campbell of Calder, Sheriff principal of the sheriffdom of Nairne, and Lauchlan M'Intosh, for his interest, and his tutors and curators, to hear and see it found, that Cadell was lawfully charged the times libelled, to take Lauchlan rebel at Alexander's instance, for disobeying letters raised against him as oye and heir to umquhile Lauchlan his goodsir; who, by bond, was obliged to pay 10 merks for ilk boll of 240 bolls bear, disponed by him to the pursuer; and that Cadell