

with papers on their breast: And in regard Gray had seduced Rutherford to sign, they ordained his lug to be nailed to the Trone; and being informed Rutherford was a notary, they deprived him, and declared them both infamous.

No 119.

1712. *June 14.*—THE two prisoners, Rutherford and Gray, mentioned *supra* 10th June 1712, having undergone their sentence, petitioned to be liberate out of prison, which was granted; but George Drummond, keeper of the tolbooth, refused till he were paid his dues. THE LORDS thought it was private right and perquisite of his office, which he could not be deprived of. In the former days, when the government was in our own hands, we had excellent rules, the Treasury and Exchequer paid for those public criminal prisoners, but now we are utterly at a loss; therefore the LORDS, till some course were fallen on, did contribute out of their own pockets to relieve these poor men, who could not pay their dues, seeing they could not force the goodman of the tolbooth to quit them.

*Fol. Dic. v. 2. p. 175. Fountainhall, v. 2. p. 735 & 738.*

1713. *February 2.*

WILLIAM GRIERSON of Bargaton, Supplicant, *against* THE MAGISTRATES OF DUMFRIES.

UPON advising a supplication presented by William Grierson, craving an order to the Magistrates of Dumfries, either to let him at liberty out of their prison, where he lay incarcerated at the instance of John Kennan, bailie, and John Rae, merchant in the said burgh, or to modify an aliment to him, payable by the said John Kennan and John Rae, and take security for the same in the terms of the act 32d Par. 1696; the LORDS ordained the Magistrates, either to modify an aliment to the prisoner, payable by the persons who did incarcerate him, or to aliment him themselves. For the LORDS thought, That magistrates had not, by the said act of Parliament, a discretionary power to liberate or detain as they thought fit, a prisoner, whom the creditor or person at whose instance he was committed to prison declines to aliment, but behoved either to aliment such prisoner themselves, or let him go free.

*Fol. Dic. v. 2. p. 173. Forbes, p. 674.*

No 120.

Magistrates are obliged either to modify an aliment to a prisoner for debt, payable by the persons who incarcerated him, or to aliment him themselves so long as they detain him in prison.

1714. *July 8.*

JOHN BOYLE, Writer to the Signet, *against* BAILIES OF HAMILTON.

IN the subsidiary action at the instance of John Boyle against the Magistrates of Hamilton, for unwarrantably setting at liberty Walter Gilchrist, incarcerated

No 121.

Form of proceeding upon the act of grace.