

## 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