

refused to set him at liberty, unless he found caution *judicio sisti*, &c.; but judged it likewise equitable, that the pursuers should also find caution to him in case they succumbed, to refund his damage and loss by the wrongous imprisonment.

No 39.

Fol. Dic. v. 1. p. 328. Fountainball, v. 2. p. 108.

S E C T. II.

Border Law.

1611. *January 22.*A. *against B.*

A BURGESS of Edinburgh may take an assignation to a debt owing to another burgess, and thereupon arrest his debtor, and cause ward him till he find caution to answer as law will. If the goaler suffer a man to escape who was warded for debt, he will become debtor to the party at whose instance he was warded; but the debt must first be tried against the principal party, unless his warding proceed upon a decret; and if he who escapes die before payment or re-entry, the goaler will be debtor. A stranger, who is addebted to a Scotsman, coming to this country, may be charged by an officer, at command of a Bailie, to enter in ward till he find caution to answer as law will.

Fol. Dic. v. 1. p. 328. Haddington, MS. No 2107.

No 40.

A stranger, who is addebted to a Scotsman, coming to this country, may be charged by an officer, at command of a Bailie, to enter in ward till he find caution to answer as law will.

1676. *January 13.*JAMES ROBERTSON *against* JAMES BELL.

IN a reduction and suspension of a decret obtained before the Sheriff of Roxburgh, at the instance of James Bell against Robertson, who was cautioner for one James Potts, Englishman, who was arrested at Bell's instance as his debtor for the price of certain sheep and goods bought from him in Scotland, upon this reason, that the arrestment was against law, the said Bell not being a burgess of the burgh of Jedburgh, where the arrestment was used; and albeit he had been a burgess, yet he could have no such arrestment, because, by the 8th act of Parliament 2d Cha. II. *anno* 1672, the said custom and privileges of burgesses is only restricted for the price of men's meat and horse meat, and abulziements, for which burgesses have action against those who are their debtors within burgh; whereas the arrestment was for the price of goods bought

No 41.

Notwithstanding the act of Parliament touching arresting persons within burgh, the Lords found, that Englishmen may be arrested within burgh, on the Scots side of the border, though by strangers and no burghers, this being the practice on the English side.