

No 78.

Magistrates
liable, if they
do not impris-
on debtors as
soon as de-
livered to
them.

1781. June 13. JEAN BELL *against* The MAGISTRATES of LOCHMABEN.

LETTERS of caption contain the following clause in the charge for incarcerating denounced debtors: ' And, if need be, that ye make steiked and lock-fast gates, doors, and houses, open and patent, and use our keys for that effect, within three days after they are charged by you thereto, under the pain of rebellion and putting of them to the horn,' &c. Two debtors were presented to the Magistrates of Lochmaben, on Tuesday the 25th March 1779, but were left at liberty till Saturday the 27th. The Magistrates were pursued by the creditor, for payment of the debt, and pleaded the above clause in their defence, as giving them a discretionary power of incarcerating at any time within three days.

Upon advising informations, the LORDS " repelled the defences, decerned against the Magistrates for payment of the debt, and found them liable in expenses."

A reclaiming petition was refused unanimously.

Lord Ordinary, *Westhall.* Act. *Ro. Dalzell.* Alt. *Il. Campbell & Geo. Currie.*
D. *Fol. Dic. v. 4. p. 136. Fac. Col. No 53. p. 93.*

No 79.

The tempo-
rary enlarge-
ment of a per-
son imprison-
ed on a *me-
ditatione fugæ*
warrant, falls
not under the
act of seder-
unt 1671.

1786. January 24. ROBERT GORDON *against* ANDREW MELLIS.

A DEBTOR of Gordon's was imprisoned in consequence of a warrant obtained against him as *in meditatione fugæ*. Mellis, the jailor, having permitted the prisoner to go at large for a short while, but without any necessity, he was sued by Gordon in an action, founded on the act of sederunt of 14th June 1671.

The pursuer *pleaded*, This act of sederunt, which declares, ' That magistrates of burghs, who shall permit any person incarcerated for debt to go out of prison, except in extreme danger of his life from the confinement, shall be liable for the debt,' is applicable to the case in question.

Answered, The object of imprisoning for a debt already constituted, is to compel payment by means of the *squalor carceris*; and when a debtor so imprisoned is unnecessarily enlarged for ever so short a period, without his creditor's consent, the latter being so far deprived of his legal compulsory, is no doubt entitled to ample indemnification. But the purpose of this imprisonment is merely to secure the prisoner's appearance in judgment, which the liberty given him has no tendency to endanger. Of consequence the act of sederunt cannot relate to circumstances like the present.

THE LORD ORDINARY having decerned against the defender,

The COURT altered that judgment, and assoilzied the defender.

No 79.

Lord Ordinary, *Hajles.* Act. *Corbet.* Alt. *Maconochie.* Clerk, *Menzies.*
S. *Fol. Dic. v. 4. p. 136. Fac. Col. No 249 p. 382.*

1786. *June 29.* PURDIE and COMPANY against MAGISTRATES of MONTROSE.

No 80.

Magistrates of a burgh found liable for the escape of a prisoner.

HAY, a debtor of Purdie and Company, having been incarcerated, at their instance, in the prison of Montrose, made his escape from thence in the day-time, by picking the lock of the door of the apartment in which he was lodged,

The Creditors brought an action against the Magistrates for payment of the debt, in terms of the act of sederunt of 11th February 1671.

THE LORD ORDINARY pronounced this interlocutor: 'In respect it is not denied, that upon Sunday, 27th June 1784, when Hay made his escape, the prison of Montrose was kept and secured in the usual way in which it had been kept and secured for many years past, and that the said escape was made by picking a padlock upon an iron lattice-door of the said prison, as to which padlock, no former apparent insufficiency is alleged, assoilzies the defenders.'

But the COURT altered that judgment, and found the Magistrates liable for the debt.

Lord Ordinary, *Henderland.* Act. *Baillie.* Alt. *Dean of Faculty & J. Erskine.*
S. Clerk, *Colquhoun.*
Fol. Dic. v. 4. p. 136. Fac. Col. No 285. p. 440.

1788. *July 8.*

ALEXANDER WILSON against The MAGISTRATES of EDINBURGH.

A DEBTOR of Alexander Wilson having been imprisoned in the jail of Canon-gate, obtained a judgment of the Court of Session, finding him entitled to a *cessia bonorum*. This judgment was pronounced on 11th March, being the last day of the Winter-Session, and immediately after he was set at liberty by the jailor.

An action, founded on these proceedings, was brought by Alexander Wilson, against the Magistrates of Edinburgh, as proprietors of the burgh of Canon-gate, and responsible for the custody of persons confined in the jail belonging to it; when it was

Pleaded in defence, The obligation of magistrates with regard to the keeping of persons arrested for debt has been partly established by the common law,

No 81.

Magistrates found liable for the sums due to an incarcerating creditor, even where the debtor had before his release obtained the *cessio bonorum*.