

WRONGOUS IMPRISONMENT.

1678. July 17. JOHN DURRIE against DAVID CAIRNS.

ONE is charged and imprisoned on a fulfilled minute by the assignee. He pursues the cedent for wrongous imprisonment, and for his damage. Alleged he should have suspended the charge. The Lords refused action since he had not used the remedy; which many of the Lords thought hard; for a pouding on a wronguous charge is a spuilzie, though the charge is not suspended, *ergo*.

No. 1.

Fountainhall MS.

1704. January 5.

PEACOCK against JOHN ALLAN, and the Other MAGISTRATES of STIRLING.

Mr. Adam, formerly Episcopal Minister at Morebattle near Kelso, being deposed by the church-judicatures, ratified by the commission of the General Assembly, on a call by some of his own persuasion in Stirling, sets up a meeting-house there; and in the end of August last while he was preaching, Bailie Allan and others come, and interrupting him, carry him away to prison for intruding into their church, where there was no vacancy, conform to the 22d act of Parliament 1695, especially he not being qualified by taking the oaths to the Queen, and being under the church-censure of deprivation. The said Mr. Adam being, after some days' incarceration, liberated by order from the chancellor, raises a process against the Magistrates for wrongous imprisonment, founded on the late famous act of Parliament 1701, libelling £2000 as the penalty for a gentleman, and £33 half a merk *per diem* so long as he was detained, after his offering bail, and taking instruments against them, that there was no subscribed written information exhibited against him, nor a written warrant containing the cause of his commitment, as by the said act is required. Answered, Mr. Peacock being deposed by the church, and not having taken the oaths, his attempting to preach in Stirling, where there was no vacancy, was a public and open violation and transgression of the laws, and being taken *in flagrante delicto* by the Magistrate, he needed no subscribed information; for whom had he to inform but himself? *2do*, He was not in the case

No. 2.
Upon the
statute 1701.