

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,