

1627. January 30. KER against The BAILIES of JEDBURGH.

IN an action betwixt Ker and the Bailies of Jedburgh, for payment of a debt owing to the pursuer, through escaping of his debtor out of the tolbooth of Jedburgh, he being there incarcerated at the pursuer's instance, for not payment thereof, being denounced rebel, and made captive therefore; in this process the Magistrates, and every one of them, being desired to be decerned to pay the whole debt *in solidum*; and two of the Magistrates compearing, and alleging, that they ought to be assolizied, because they offered to prove, that the third Bailie being in office, took the debtor out of ward, without knowledge of the other Bailies; and as he alone might incarcerate a rebel, being charged to do the same, so he might alone relieve him; and therefore *cum noxa caput sequatur*, they ought not to be answerable for his fault, whereto they were not accessory, at the least they alleged that he ought to be first discussed: The Lords repelled this allegiance, for they found, that the whole Magistrates were one body, and that they ought to be answerable for the faults committed by any of them in their office; for the party might be ignorant which of them did the fault; and therefore that they ought to count thereupon amongst themselves; and if any one did the wrong, they had action of the law against the delinquent, who ought to be answerable to the rest for the wrong after trial thereof amongst themselves; but that the whole Magistrates stood obliged as said is, to the party, as one body: But the Lords would not sustain the action and conclusion of the summons, wherby every one of the Magistrates was convened *in solidum* for the whole debt, but sustained the same against them as an united body as said is.

Alter, Sandilands.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 386. Durie, p. 265.*

1634. November 11. BROWN against TOWN of INVERNESS.

ALTHOUGH a prisoner escape by one Magistrate's fault only, yet all are liable, reserving to them their relief against him, or against the Town, if he be insolvent.

*Fol. Dic. v. 2. p. 386. Durie. Auchinleck.*

\* \* This case is No. 31. p. 11701 *voce* PRISONER.

No. 112.

Found in conformity with the above.

No. 113.