

hens Active, except they were forced and returned, and is Equivocal to Blane Constat, which proves their passive, but not Active Report. § 236. The Magistrates of any Burgh Royal are in use and may lawfully (as some think) in time of scarcity break up the doors of Victual houses within Burgh, and ordain the Victual to be sold at competent Rates if the Merchants be either unwilling or absent. Whence offens. on act 39 Parl. 10. J. 2. offens. on act 22 Parl. 6. J. 2.

The Provost Bailiis council and Communities of Burghs ought to have sufficient and sure prisons for receiving and keeping such as are attached for Crimes or debts act 273 Parl. 15. J. 6 that is not only Burghs Royal; but also Burghs of Regality & July, 16 Hamilton contra Callender. for George Mackenzie (offens. on d. act 273) says, that it seems by the statute only Burghs who have Provost and Bailiis are obliged to have prisons, because it appoints prisons to be kept by the provost Bailiis &c. But this must be understood applicando singula singulis, so that prisons are to be maintained by the Provost and Bailiis in Burghs where all such Magistrates are, and by the Bailiis &c. where there is no provost. For there are many Royal Burghs, as well as Burghs of Regality and Barony that want Provosts. A Prison is not held to be sufficient that wants cal band and outward chains, which prisoners cannot force from within. Whence offens. on act 273. If Magistrates of a Burgh refuse to imprison such as are presented to them for debts, they are liable to the debts; without obliging the Creditors to discharge first the principal Debtors. Whence offens. on act 273. *vid. pag.*

When houses are ruinous within a Royal Burgh by the space of three years, the Magistrates may warrant those known to have entered therein of property or

Annualrent, personally or at their dwelling houses, and these and all others at the parish church and Market Cross of the Burgh; and in case of their absence out of the Realm, at the Cross of Edinburgh year and feast of St. Andrew on 60 days; to repair them within Year and day or other ways that they will cause the same to be valued and sold to others paying or consigning the Price, and the repairing them within the said space. If none will buy such houses, the Magistrates may buy and rebuild them. And the Buyer and builder of such houses are to be unquestionably bound act 6 Sept. 3 Parl. 1. Ch. 2. act 8. Parl. 7. J. 1. Which is allowed, no Civitate aspectus De formator, and is agreeable to the Civil law l. 4 C. de juris Reipublice l. 4 ff. de Damn. Infesto. Nor is any person a loser thereby: seeing the owner may repair for himself if he will, and if not, he gets the full price of his ground. *vid. pag. 83.* The Houses to be taken by Magistrates with the forfeited lands within Burgh that are ruinous or waste, upon application of the heritors, is explained in another place *vid. vol. 1. pag. 472.*

The goods or estates of Private Burgesses cannot be affected for debts contracted by the Magistrates and Council of the Burgh, but only the Common good thereof *Carp. Jurisprud. Ground. part 2. Bond. C. 24.*

In old time ordinary Actions within Burghs were judged by the Council of the Burgh act 4 Parl. 11. J. 2. But now by the Bailiis Whence offens. on d. act 46. The Magistrates of some Burghs may, and others may not judge Murders. And those only have power to judge slaughter who are Sheriffs within them *felous act 93 Parl. 6. J. 1. Whence offens. on d. act 93* as the Magistrates of some Burghs Royal and