

1611. January 8.

BAILLIE against TORPHICHEN.

JOHN BAILLIE in Braidshaw pursues James Sandilands of Calder, Lord Torphichen, for spoliation of certain horses and kine and other goods, and namely, a dun horse, beand for the time in the possession of James Baillie.

Alleged, absolvitor frae the spuilzie of the dun horse, because any baron, or his bailie and officers, who finds and apprehends any person, stranger, committing any riot, wrong, or violence within the bounds and barony, may lawfully apprehend, and seize upon the person committer, and upon his goods and gear; and true it is, that James Baillie, in whose possession the horse is confessed by the libel to have been at the time of the alleged spuilzie, was apprehended for committing of a riot within the bounds and barony of Calder, pertaining to the excipient, viz. for dinging and wounding, by himself and his associates, of Andrew Aikman officer and servant to the defender; and therefore the bailie of the barony and his officers having apprehended himself, might lawfully meddle with the horse found in his possession. *Replied*, James, when the horse was tane, was within the house of Aulderstone; and, at that same time, the said horse was pasturing in the fields of Aulderstone, so that he was not found in James his possession, neither had they necessity to have meddled with him. *Duplied*, Offers to prove that James, after the committing, was chased by the bailie and officers of the barony to the house of Aulderstone, and there lapp frae his horse to winn the house, so that the bailie and officers might have tane both man and horse without danger of spuilzie. Admit the exception and duply to the defender's probation.

2do, James being denuoned rebel for not compearance before the secret counsel, at the defender's instance, or of John Lawrie his tenant, or either of them, it is of verity, that in respect there was a commission direct to apprehend him by the LORDS to John Johnston messenger, John Johnston, with concurrence of the defender's officer, took James and his horse, wherein there is no wrong either to the messenger to take, or the messenger to assist the taking of both.

Act. Oliphant, King, & Belches.

Alt. Nicolson, Hope, Learmonth.

Fol. Dic. v. 1. p. 326. Nicolson, MS. No 205. p. 146.

* * * Haddington reports the same case :

JOHN BAILLIE of Braidshaw pursued my Lord of Torphichen for spoliation frae him, upon the sixth of June 1604, of ane horse whilk pertained to the persewar, and was lent be him to James Baillie his brother, and also for spoliation from the pursuer, be himself, his servants, and others in his name, of his causing, command, and assistance, of four ky, committed upon the 12th of June 1604. It was *excepted*, that na wrong was done in taking of the horse, because the said James Baillie, to whom the horse was lent, be himself and his accom-

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A baton-bailie and his officer may pursue and follow after a stranger, and apprehend him or his goods, even without the barony, for a riot committed within it.

No 16.

plices having under cloud and silence of the night come to the house of — in the barony of Calder, and entered *per force* therein, and given mony straiks and bluidie wounds to the maister thereof, and to ane of his bairns, who died of the said straiks, and thereafter came to Andrew Aikman officer of the said barony, and strack him through the body with ane lance, for the whilk transgression my Lady Torphichen, in absence of my Lord, who was then in England, commanded Mr John Brown bailie of the said barony to seek, take and apprehend the same James, who finding him within the barony within forty-eight hours after hurting of Andrew Aikman, persewed the said James for his apprehension, chased him to Mr Peter Killoch's house of Adiston, and tuke him and put him in wairde in Calder, and at that same time taking the horse whereon he was riding, he did na wrong, specially he having offered baith the man and horse to the Sheriff, and thereafter made offer of restitution of the horse to James Baillie after he was put to liberty; whilk exception was found relevant for eliding the spulzie and profits, but not for the price of the horse libelled. In that cause it was found, that ane baron may take ane malefactor, having committed ane violence or oppression in his barony, *etiam in facto non recenti*, but that he may not put him to an assize for ane criminal cause, for the whilk he was not tane redhand; and where ane magistrate tuke ane malefactor he might take his horse he rode on, and keep him while the offender were tried, or the horse claimed be ane partie having interest. It was thereafter excepted, that the defender did na wrong in taking the horse, because James Baillie being put to the horn for the first oppression, and commission given be the Lords of Secret Council, for his apprehension, the defender assisted the officer in execution of the commission in his taking. To this was *answered*, That the commission could be no warrant to his taking or meddling with his horse, because the horning whereupon the commission was direct was suspended, and he lawfully relaxed by open proclamation at the market-cross before the day of his taking. The defender *duplicated*, That the relaxation was not sufficient unless the party had been warned. It was *answered*, That the party was summoned before the day of compearance; notwithstanding whereof the Lords found the exception relevant against the spulzie, but prejudice of the action for the price of the horse. It was thereafter *excepted* for the defender, that he did na wrang in intromitting with the four ky, because James Baillie being unlauded in an unlaw of fifty pounds for not compearance in my Lord Torphichen's court of Calder, to answer for the wounding of Andrew Aikman, they lawfully poinded the said four ky, for the said unlaw, upon the 9th day of June 1604. The persewar *replyit*, That the exception met not the libel, because he libelled that the ky was spulzied upon the 12th day of June, and remained in his possession till that time, likeas then they could not lawfully have poindit his goods, because upon the 11th day of June they were dischargit be the Lords letters anyways to trouble, molest, take, poind, or arrest the persewar's person or goods. Notwithstanding whereof the Lords found the exception relevant, and preferred

the defender in probation in favour of his decret, and that the hail exception was proven be writ. It was likewise found in that cause, that ane baron's decret may be put to execution incontinent after the pronounciation thereof, and that it needs not fifteen days delay. It was remembered, that in an action of the Laird of Wedderburn's, decided in December last, the LORDS found that it was lawful for ane baron to condemn ane man convict for blude in thair court in fifty pound, or to unlaw him in the like soume for non compearance.

Haddington, MS. No 2067.

No 16.

1630. July 28. L. FREELAND *against* SHERIFF of Perth.

ONE of the L. Freeland's tenants being unlawed in his baron-court for blood, and being therefore lawfully convict, and having paid the unlaw; this tenant being thereafter convened for the same blood before the Sheriff, and it being drawn in dispute before the LORDS, if that conviction, and payment conform thereto, done in his master's court, should liberate him, seeing the Sheriff alleged it ought not to free him, because albeit the baron might convict his own tenant, in his own court for blood, yet that right is only competent to the baron, where both the person committer of the blood, and the other party, whose blood is drawn, are both tenants to the baron; and so where they are both subject to the court, or else where, and when the fact is committed upon his own ground; but being done upon the ground, pertaining to another heritor, the baron had no power to cognosce thereupon. THE LORDS found, that seeing this fact was not done upon the baron's ground, and that both parties were not his tenants, neither did the party hurt complain to the master in the master's court, nor seek reparation there, *quo casu* the master might claim the process, if it had been so proceeded, albeit the committer was his tenant, yet that the Sheriff was only judge to try the same; and that the trial made by the master did not liberate him, but that the Sheriff might proceed, and ought to be preferred.

Fol. Dic. v. I. p. 327. Durie, p. 536.

1672. February 6. SIR ROBERT MURRAY *against* MURRAY of Bruchtoun.

THE late Earl of Annandale Murray having by his will made at London, bequeathed or legated his estate in Ireland to Sir Robert Crichton (he assuming the name of Murray) which is allowable by the law of England; and having before conveyed that same estate in favours of Richard Murray of Bruchtoun, by a conveyance, according to the law of England, whereby on the one day he grants a lease of the said estate to the said Richard, and on the next day there-

No 17.

A baron having unlawed his tenant for blood, the decret was found null, because the fact was not done upon the baron's ground, nor did the party hurt live within his jurisdiction, or make his complaint there.

No 18.

A forgery committed in Scotland by a Scotsman may be challenged before the Lords, and improbation will pass.