

1624. *March 24.*

No 16.

JOHN INGLIS *against* BAILIES OF DUNFERMLINE, and SIR ROBERT MOUBRAY.

A MAGISTRATE taking a rebel upon a charge of letters of caption, and suffering him to go free, and being thereafter pursued for the debt, will not be admitted to re-enter the rebel *cum omni causa*.

Fol. Dic. v. 2. p. 168. Haddington, MS. No 3096.

1626. *June 29.* HALIBURTON *against* PROVOST OF JEDBURGH.

No 17.
Where the debtor was only denounced for the principal sum, the Magistrate was found not liable for the annualrent which fell due afterwards.

IN an action pursued by Haliburton of Merton *contra* the Provost of Jedburgh, who for not taking of Mr John Hume rebel, by virtue of letters of caption at the pursuer's instance, was convened for payment of the principal sum, and of the annualrent thereof, since the time of his rebellion, conform to the act of Parliament 1621; the LORDS found, that the summons bearing, the rebel was in the Provost's company the time of the charge given to him to take him, ought to be otherways proved than by the officers' execution; which execution they found no ways sufficient to prove the same, and therefore admitted the summons to probation, to be otherwise proved, as accords of the law. *Item*, In this process the LORDS sustained the action against the Magistrate, only for payment of the principal sum, and not for the annual thereof since the rebellion, in respect the Provost could not be debtor for any more than for that sum, for the which the rebel was denounced, and for the which caption was executed; for if the rebel or Magistrate had paid that sum, neither could the rebel then have been taken for the annual since the rebellion, the same not being contained in the horning, nor no caption against him therefore; and so the LORDS assoilzied the Provost from that part of the summons, but prejudice to seek the same from the rebel's self, as the pursuer might best do of the law. *See PROOF.*

Act. Haliburton.

Alt. Sandilands.

Clerk, Gibson.

Fol. Dic. v. 2. p. 171. Durie, p. 205.

No 18.

Found a sufficient defence to Magistrates pursued for refusing to receive a prisoner, that the messenger by whom he was appre-

1626. *July 25.* SMITH *against* BAILIES OF NORTH-BERWICK.

THE Bailies of North-Berwick being pursued by one Smith, for payment of a sum addebted to him by one Lawder, in respect they being charged by caption to take him, they did not the same, he being in their company; the defenders *alleged*, That they did no wrong in refusing to take the said rebel, because the messenger who charged them, was deprived of his office, before the charge given to them; which deprivation was published at the market-cross.

before the same charge, for verifying whereof they produced a testificate subscribed by Sir Jeromy Lindsay, Lyon King at Arms, bearing, That he had deprived him, and had caused lawfully publish the same. THE LORDS found not this testificate sufficient, but astricted the excipients to prove, that the officer was deprived, either by production of a decreet of deprivation, or by production of a lawful publication of his deprivation; either of the which being positively alleged, viz. either that he was deprived by a sentence, or that there was publication made of the deprivation, albeit they alleged not a sentence preceding depriving him, but only that publication was made that he was deprived, the LORDS found any of these two relevant, and any of them being proved, to be sufficient to elide this pursuit. See PROOF.

Fol. Dic. v. 2. p. 166. Durie, p. 226.

No 18.
hended had
been deprived
by a sentence,
or *separatim*,
that publica-
tion had been
made of his
deprivation.

1627. February 24. BROWN against SHERIFF of WIGTON.

A SHERIFF that puts a rebel taken by him in the ward and burgh, cannot be pursued for the sum addebted by the rebel, if he escape out of the ward not by the Sheriff's permission.

Fol. Dic. v. 2. p. 169. Auchinleck, MS. p. 212.

No 19.

* * * Durie reports this case :

1627. March 2.—IN an action, Brown son to Mr William Brown against the Sheriff of Wigton, for payment of a debt owing to the pursuer, because after his debtor was taken by letters of caption by the Sheriff, and put in ward by him in the tolbooth of Wigton, which is the head burgh of the sheriffdom, he escaped, the LORDS found no action against the Sheriff of the sheriffdom who had taken the rebel, and put him in prison in the town; because thereafter *functus erat officio* as to the rebel's escaping out of prison, except he had been actor, or accessory to his escaping.

Act. *Cunninghamc.*

Alt. *Belshes.*

Clerk, *Scot.*

Durie, p. 284.

1627. March 21. E. CASSILLIS against AITKIN.

IN an action at the instance of the Earl of Cassillis against Aitkin, to hear and see it found, that he as Bailie to the Bishop of Galloway (who hath not the lands of that bishoprick in a regality), is not subject nor obliged in law, by vir-

No 20.