

FAIRS AND MARKETS.

1552. November 16. GEORGE GIBSON *against* THOMAS KER.

IN an action persewit be George Gibson against Thomas Ker, for breaking of ane arrestment, it was *alleged* be the said Thomas, That he might lawfully depart, notwithstanding the alleged arrestment, because it was done in time of fair, whilk gives immunitie in time thereof.—To the whilk George *replied*, That gif the arrestment had not been lawful, he should have tarried while it had been declared null; whilk reply was repelled.

Fol. Dic. v. 1. p. 294. Maitland, MS. p. 114.

1629. July 2. BISHOP OF GAITHNESS *against* FLESHERS in EDINBURGH.

If any buy any stolen goods in a market, the owner of the goods may pursue the buyer thereof, although the thief be executed, for repetition of his gear, but not to have them punished in their persons.

Fol. Dic. v. 1. p. 294. Auchinleck, MS. p. 22.

1639. March 19. FERGUSON *against* FORREST.

ONE Ferguson pursuing one Forrest, for restoring to him of his mare, which properly belonged to him, and was stolen from him off the ground of the lands of ———, whereupon he dwelt, and which mare was then, and before in his possession, and was his own mare, so known to the neighbours about in the country, and the defender *alleging*, That he ought to be assoilzied, because he bought the mare libelled, in the open market, at a public fair, in the market time of day, and paid the price thereof, which ought to liberate the defender, being so bought and sold in a burgh royal, in a public ordinary fair day kept in that town; likeas, the mare is now dead, and so there is no place nor possibility of restitution, albeit the action might be sustained;—THE LORDS repelled the allegiance, and sustained the action, which was found not elided.

No 1.

No 2.

No 3.

A person buying a stolen horse, though in a public market, is liable in restitution to the owner, and has recourse against the seller.