

has disobeyed the charge, and that wherethrough he ought to make payment to the pursuer of the said moneys, and therefore to hear him decerned to pay. *Alleged* for Cadell, The time of the second charge Lauchlan was in Edinburgh *extra territorium*, out with the bounds of the defender's jurisdiction, as Sheriff of Nairne, within the bounds whereof he was only subject to search and seek. *Replied*, Because the time of the first charge, they were both the Sheriffs and rebels within the sheriffdom of Nairne, quhilk put the Sheriff defender in *mala fide*, in not taking the rebel, being in company with him in Edinburgh the time of the second charge; specially seeing the pursuer offers to prove, that the rebel has been diverse times in company with the Sheriff within the bounds of Nairne, since the time of the first and second charges. Admits the reply and summons to probation.

No 5.

*Mr Wm. Oliphant & Mr Hew Kinross.*

*Fol. Dic. v. 2. p. 167. Nicolson, MS. No 279. p. 192.*

1615. *January 12.* GRAY *against* MELLIS.

IN an action betwixt George Gray and Constantine Mellis, Bailie of Perth, for letting off William Grant furth of ward, the LORDS found, that one of the Bailies could not be convened for suffering the party to go furth of ward, except the hail Bailies and Council were summoned; but found that part of the libel relevant, which bore, that he was put to liberty at the command of the said Bailie *propter suam culpam*.

No 6.

*Item*, in this same cause, the LORDS sustained that, three years together after Grant past furth of ward, he remained in Perth, having his dwelling-house, and openly repaired to kirk and market during the whole time, if the pursuer would have challenged, he would have re-entered him *cum omni causa*, but by the pursuer's fault he is not entered, because, after the delay of three years, Grant became *non solvendo*, and fled out of the country.

*Fol. Dic. v. 2. p. 169. Kerse, MS. fol. 240.*

1621. *March 1.* SOMERVAILL *against* BAILIES of DUNBAR.

JAMES BAILLIE Provost, and the Bailies of Dunbar, raise suspension and relaxation of horning used against them by Patrick Somervail, and Oliver Philip, burgess of Edinburgh, for not taking Learmont of the Hill, and Mr James Home, parson of Dunbar, their debtors, rebels; *ratio*, neither by the first nor second charge, did the messenger or any other either offer to go foot for foot, or designed the place where the rebel was; *alleged* orderly proceeded, offers to prove since the first charge, whilk was the 19th October 1620, the

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No 7. complainers has intercommuned with Mr James one of the rebels, and so had occasion to have apprehended him, they being charged to that effect:—*Probationi* the allegiance. See No 2. p. 11687.

*Nicolson, MS. No 280. p. 193.*

No 8. 1622. *January 16.* L. DRUMLANRIG *against* L. CASHOGIL.

IN a declarator of escheat pursued by the L. Drumlanrig against Cashogil, proceeding upon an horning executed against him, for not obeying of charges given to him as Bailie of Morton, to take some rebels; the LORDS found, conform to the old practick, that that horning, and all hornings of that nature, could not be sustained, except there had been a preceding charge executed against the defender upon another horning, whereby the Bailie was charged to take the rebels, by the disobedience whereof, the letters of horning, whereupon he was denounced, ought to be directed; and therefore ordained the prior letters and charges to be produced, without production whereof, the LORDS found the horning null.

*Act. Hope.*

*Alt. King.*

*Clerk, Scot.*

*Fol. Dic. v. 2. p. 167. Durie, p. 9.*

1622. *March 6.* FRANK *against* BAILIES OF PEEBLES.

No 9. IN an action against Bailies of a burgh for letting furth a ward, the LORDS sustained action against a Bailie for payment of the debt, albeit the party was demitted after he was out of office, except the Bailie would allege, that he intimated the charge given to him to the entrant Bailies.

*Fol. Dic. v. 2. p. 167. Kerse, MS fol. 227.*

No 10.

Found in conformity to Vauss against Calder, No 5. p. 11688.

1622. *March 16.* SCOT *against* One of the BAILIES of MONTROSE.

SCOT pursued one of the Bailies of Montrose to pay to him a sum, for which he had denounced Thomas Forbes, because the Bailie being charged to take the rebel, had not obeyed. He *alleged*, That the rebel had parted out of the country before the second charge, and was yet absent. The allegiance was repelled, because the pursuer offered him to prove, that the rebel had been in company with the Bailie in Montrose diverse times after the first charge given.

*Fol. Dic. v. 2. p. 167. Haddington, MS. No 2616.*