

1622. *March 16.* FORBES *against* BAILIES OF ABERDEEN.

ONE Forbes in Montrose having charged one of the Bailies of Aberdeen, to take ———, burgess in Aberdeen, debtor to the charger; the Bailie suspended upon this reason, that he could not be compelled to take him upon the first charge, but that the party behaved to use and raise new letters, and a second charge, before there were necessity to the Bailie to take the party; *2do*, That the Bailie could not be compelled to take the party debtor, seeing he was brother to the Bailie, against whom he could not be compelled to use such rigorous execution of caption, seeing there were other three Bailies within the town, whom he might more conveniently charge to execute that caption. THE LORDS found none of the reasons relevant, and therefore sustained the charge against that same Bailie.

No 11.

Act. ———.

Alt. ———.

Clerk, *Gibson*.

*Fol. Dic. v. 2. p. 167. Durie, p. 22.*

1622. *July 14. and November 30.* SIBBALD *against* BLYTH.

FOUND that a Bailie in burgh, who takes not the rebel, being exhibited to him, is obliged to pay the debt; and albeit the Bailie thereafter take the rebel *post intervallum*, and put him in ward, yet that relieves him not of the payment, because at that time he took him not, being in his hands and power. This exception being proponed for David Sibbald Bailie in Perth against John Blyth in Dundee, for the taking Andrew Mathie, that he thereafter took him, and put him in ward where he remains in as good state, was repelled by interlocutor.

No 12.

*Fol. Dic. v. 2. p. 168. Kerse, MS. fol. 227.*

1623. *March 13.* BAILIES OF DUNSE *against* MUDIE'S CREDITORS.

THE Bailies of Dunse, which is but a burgh of barony, being charged to take Robert Mudie, who was rebel at the horn, and having suspended on this reason, viz. that they being but Bailies of a burgh of barony, they ought not to be compelled to execute such charges, if any should be directed against them, in respect their jurisdiction and authority extended only to execute decreets and acts of their own courts, and that their power might go no further, and that it is against equity to urge them to do that which their power will not answer; the LORDS found, that Bailies of burghs of barony ought not to be compelled, and so ought not to be charged with such charges as to take the King's rebels; but all such charges should be directed to officers and Magis-

No 13.  
Bailies of burghs of barony cannot be compelled to take a rebel.