

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.