

other *answering*, that he was judge to repairing violence done within the shire, the LORDS would not annul the decret by way of exception.

No 366.

*Fol. Dic. v. I. p. 510. Haddington, MS. No 2780.*

1628. *March 26.* LORD LOVAT *against* SHERIFF of Nairn.

IN a reduction, the Lord Lovat *contra* Sheriff of Nairn, for reducing of two acts, whereby two Highlandmen, and the Lord Lovat, as cautioner for them, was obliged to compear before the Justice, and to underly the law for poisoning of some persons, and who were unlawed in the sums, for which they found caution, in respect of their non-compearance; the reason of reduction was, because the Sheriff had no power to cause the said persons so to act themselves, except there had been a preceding charge directed against the said alleged malefactors, or else that they had been taken *in flagrante crimine*; whereas in this case, neither was there any charge against the malefactors, nor had the sheriffs warrant to take them; and it was not *in flagrante crimine*, seeing the fact for the which the sheriff caused them be acted to compear to underly the law, was committed 15 or 16 years before that. Likeas the said act being for the sum of 300 merks, and so in a matter of importance, and in an inferior court, it was not subscribed by the parties alleged acted thereby; this reason of reduction was found relevant. See PROOF.

No 367.

Found, that a Sheriff had no power to oblige parties to enact themselves with caution to appear on an accusation of murder, unless they had been taken *in flagrante crimine*, and there had been a preceding charge.

Act. *Lawtie.*

Alt. *Mowat.*

Clerk, *Hay.*

*Fol. Dic. v. I. p. 510. Durie, p. 371.*

1631. *March 26.*

SEATON *against* HUME.

THE LORDS found, that Sheriffs are competent judges in actions pursued against defenders, as charged upon 40 days, as use is, to enter heirs to their predecessors; and repelled the allegiance, whereby it was *alleged*, that no inferior judge ought to proceed in such causes, but that such causes were only proper to be cognosced and decided before the Lords of Session; for if the defender should renounce, it were not proper to inferior judges to cognosce, if the renunciation were sufficient or not, or what was or should be the consequence thereof, or if the party should be reponed against the same, or not, but the Lords of Session were only proper judges thereto, which was repelled.

No 368.

Found, that Sheriffs are competent judges in actions pursued against defenders, as charged upon 40 days, to enter heirs to their predecessors.

*Fol. Dic. v. I. p. 510. Durie, p. 586.*