

No 24. 1629. *March 27.* ———— *against* ROBERTSON.

JAMES ROBERTSON, Bailie of Inverness, was charged to take a rebel, being in company with the Bailie in a house in Inverness; and for disobedience is charged for the sum addebted by the rebel. It was *alleged* by the Bailie, That the horning whereupon the caption was granted was not produced. *2do*, That the Bailie was not obliged to take the rebel upon the first charge. THE LORDS repelled the allegeances.

*Auchinleck, MS. p. 23.*

No 25. 1629. *June 23.* ROSS *against* ROBERTSON.

THE said James Robertson being pursued for not taking a rebel at the instance of one Ross; it was *alleged* by the defender, That all parties having interest were not summoned, viz. the rebel, who, if he had been called, might have alleged, that he made payment to the pursuer. THE LORDS found it not necessary to summon the rebel.

*Auchinleck, MS. p. 23.*

\* \* \* Durie's report of this case is No 34. p. 2193., *voce* CITATION.

\* \* \* Spottiswood reports this case :

1629. *June 25.*—N. Ross pursued James Robertson Bailie of Inverness, to hear and see him decerned to pay to the pursuer L. 1000 for not apprehending a rebel, being charged with letters of caption for that effect. *Alleged*, No process, because all parties having interest were not summoned, viz. the rebel, who being called might allege payment or transaction. THE LORDS repelled this allegeance.

The like found between Douglas and Dunbar Bailie of Tain, 26th March 1634. for when one is convened *ex proprio delicto*, there needeth no other to be summoned thereto.

*Spottiswood, (CAPTION.) p. 32.*

No 26. 1629. *July 30.* MALACHIE *against* LAIRD of RENTON.

THE Laird of Renton, Sheriff of the Merse, being charged at the instance of Mungo Malachie, burgess of Edinburgh, within the town of Edinburgh, to take Sir George Home of Manderston, who was not then in Edinburgh, but dwelling in Berwick, and for disobedience is pursued to pay the sum of 1100