

a caption against the debtor, then in the defender's house, it was *alleged* for the defender, That the intimation being made a little before my Lord went to dinner, the gates were shut immediately after, according to the custom of the family; and, when dinner was over, the messenger was allowed to search, my Lord having searched by his servants; and my Lord was willing to depone he knew not that the rebel was in the house, or that any absconded, or conveyed him away.

No 56.

Answered: The messenger intimated his caption to my Lord, who was looking out at the window, and the gates were, immediately thereafter, shut upon the messenger for some hours, whereas he ought to have been allowed to search presently for the rebel.

THE LORDS sustained the answer relevant.

Harcarse, (CAPTION.) No 232. p. 56.

1687. December 14.

THOMAS FEUDAR *against* The MAGISTRATES of HADDINGTON.

REDFORD reported the subsidiary action pursued by Thomas Feudar, servant to Sir Patrick Home, Advocate, against Sir William Paterson, Provost, and the other Magistrates of Haddington, for suffering one Cowan to escape out of their tolbooth. The defence was, that his escape was fortuitous, &c. and the act of sederunt, made in July 1671, and the occasion thereof, (being the debate between the Town of Brechin and Laurence Dundass) were cited, with other practiques. The LORDS found the defence relevant, that the prisoner escaped *casu improviso*, in so far as Claver's troop being at Haddington on the 14th of October, and having the keys of the tolbooth where they kept guard, and they in a frolic having caused the prisoner drink the king's health, in the disorder and confusion the rebel had escaped; and that the Magistrates, within two or three days, after a search, did apprehend and put him again in prison; and recommended to the reporter to inquire into that point, anent the pursuer's taking an assignation during the dependence of the plea, because he was a member of the house, contrary to the act of parliament.

No. 57.

Fol. Dic. v. 2. p. 171. Fountainhall, v. 1. p. 499.

1694. July 13.

SIR JAMES ROCHEAD of Inverleith's RELICT, *against* MESSRS COCKBURN and BROWN.

THE Relict of Sir James Rothead of Inverleith, in a subsidiary action *contra* John Cockburn, baron bailie of Dunse, and Brown his jailor, for paying a debt

No 58.

Found again
in confor-
mity to
Cheap against