

S E C T. VIII.

Citation in Process upon Delinquencies.

1554. August 3. The QUEEN against LD. CAPRINGTON.

ANENT the summons pursewit at the instance of the Q. g. against the Ld of C. and others of inqueist, it was *allegit* be the said Ld, that they might not proceed against him, the rest of the inqueist not being lawfully summoned, because the action was convict; whilk alledgeance was repelled, and process ordained against the said Laird.

Fol. Dic. v. I. p. 134. Maitland, MS. p. III.

No 31.

Process may go on against any one of an inquest for error, without calling the rest.

1573. July. LD. RUTHVEN against ST COLM.

AN inquest may be pursued for error, though some of them be absent.

Fol. Dic. v. I. p. 134. Erskine, MS.

* * * See This case, *voce* PROCESS.

No 32.

1621. November 22. SCLAITER against ROSS.

ANDREW SCLAITER having charged Richard Ross, Bailie of Burntisland, by letters of caption, to take John Murray, who was denounced rebel at the said Andrew his instance, for not payment of certain sums; upon the Bailie's disobedience, the Bailie is pursued for payment of the sum; where the Lords found that there was no necessity to summon the party principal debtor to this pursuit, for his interest, nor that there was any necessity of a second charge against the Bailie, before that pursuit could be intented, seeing the rebel was instantly at the time of the first charge presented and shown to the Bailie. But the LORDS sustained the pursuit, notwithstanding of both these allegeances.

Act. *M'Gill.* Alt. *Lawrie.* Clerk, *Gibson.*

Fol. Dic. v. I. p. 134. Durie, p. 3.

No 33.

A Magistrate being charged to take a rebel, and disobeying; in an action against himself for the sum, found unnecessary to cite the rebel.

1629. June 25. ROSS against BAILIES of INVERNESS.

THE Bailies being pursued for not taking the rebel denounced, they being charged by the creditor by letters of caption to that effect; and the Bailies *alleging*, That no process ought to be granted against them, seeing the rebel was not summoned to the pursuit, who might allege payment, or propone some other

No 34.

Found in conformity with the above. The rebel had been before decerned against.