

No 2.
go foot for
foot with him,
otherwise the
charge is
null.
See No 7.
p. 11689.

not done the same. It was *alleged* by Sir John, That the horning used against Sir John was null, because, when he was charged to take them, the officer had not offered to go foot for foot with him; which exception the LORDS found relevant. It was then *replied* by the said Boyd, That the said Sir John had seen the charge, haunted familiarly with the said rebels, and had eaten and drunken with Balhousie, and the rest of them. THE LORDS reminded of a practick, whereby the Bailies of Kirkcaldy were compelled to pay the rebel's debt, because he had haunted with them after they were charged to take them.

Fol. Dic. v. 2. p. 167. Haddington, MS. No 1467.

No 3. 1609. December 1. APPLGIRTH, Supplicant.

THE Laird of Applegirth being warded in the tolbooth of Edinburgh for debt, and having contracted sickness, desired to be transported to the town, upon caution to keep ward in the town, and to re-enter so soon as he could, or to satisfy all parties. THE LORDS found his desire reasonable, he testifying his disease by the testimonial of a doctor.

Fol. Dic. v. 2. p. 169. Haddington, MS. No 1669.

No 4. 1610. December. TOWN OF LINLITHGOW against _____.

IN a suspension pursued by the Town of Linlithgow against _____, for suspending charges used against them for apprehending rebels, the LORDS would not sustain process upon the first charge, nor find the letters orderly proceeded thereupon, notwithstanding it was *answered*, that the time of the charge the rebel was with the Bailies, and in their sight.

The like of this decided betwixt James Drummond, Bailie of Perth, and Weems.

Fol. Dic. v. 2. p. 167. Kerse, MS. fol. 227.

No 5.
A Magistrate
charged to
take a rebel,
was found
liable in the
debt, because
he had been
in company
with the re-
bel after the
charge.
See No 10.
p. 11690.

1610. December 5. VAUSS against L. CALDER.

ALEXANDER VAUSS, burgess of Edinburgh, pursues Sir John Campbell of Calder, Sheriff principal of the sheriffdom of Nairne, and Lauchlan M'Intosh, for his interest, and his tutors and curators, to hear and see it found, that Cadell was lawfully charged the times libelled, to take Lauchlan rebel at Alexander's instance, for disobeying letters raised against him as oye and heir to umquhile Lauchlan his goodsir; who, by bond, was obliged to pay 10 merks for ilk boll of 240 bolls bear, disponed by him to the pursuer; and that Cadell

has disobeyed the charge, and that wherethrough he ought to make payment to the pursuer of the said moneys, and therefore to hear him decerned to pay. *Alleged* for Cadell, The time of the second charge Lauchlan was in Edinburgh *extra territorium*, out with the bounds of the defender's jurisdiction, as Sheriff of Nairne, within the bounds whereof he was only subject to search and seek. *Replied*, Because the time of the first charge, they were both the Sheriffs and rebels within the sheriffdom of Nairne, quhilk put the Sheriff defender in *mala fide*, in not taking the rebel, being in company with him in Edinburgh the time of the second charge; specially seeing the pursuer offers to prove, that the rebel has been diverse times in company with the Sheriff within the bounds of Nairne, since the time of the first and second charges. Admits the reply and summons to probation.

No 5.

Mr Wm. Oliphant & Mr Hew Kinross.

Fol. Dic. v. 2. p. 167. Nicolson, MS. No 279. p. 192.

1615. *January 12.* GRAY against MELLIS.

IN an action betwixt George Gray and Constantine Mellis, Bailie of Perth, for letting off William Grant furth of ward, the LORDS found, that one of the Bailies could not be convened for suffering the party to go furth of ward, except the hail Bailies and Council were summoned; but found that part of the libel relevant, which bore, that he was put to liberty at the command of the said Bailie *propter suam culpam*.

No 6.

Item, in this same cause, the LORDS sustained that, three years together after Grant past furth of ward, he remained in Perth, having his dwelling-house, and openly repaired to kirk and market during the whole time, if the pursuer would have challenged, he would have re-entered him *cum omni causa*, but by the pursuer's fault he is not entered, because, after the delay of three years, Grant became *non solvendo*, and fled out of the country.

Fol. Dic. v. 2. p. 169. Kerse, MS. fol. 240.

1621. *March 1.* SOMERVAILL against BAILIES of DUNBAR.

JAMES BAILLIE Provost, and the Bailies of Dunbar, raise suspension and relaxation of horning used against them by Patrick Somervail, and Oliver Philip, burgess of Edinburgh, for not taking Learmont of the Hill, and Mr James Home, parson of Dunbar, their debtors, rebels; *ratio*, neither by the first nor second charge, did the messenger or any other either offer to go foot for foot, or designed the place where the rebel was; *alleged* orderly proceeded, offers to prove since the first charge, whilk was the 19th October 1620, the

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