No 365. therefrom, but behoved to have recourse to the King's chancery; and as it might be doubted whether these lands were annexed to the shire of Edinburgh, for the purpose of the said sheriff's granting infeftment, he prayed the Lords to grant warrant to the directors of the King's chancery for issuing brieves, and upon their being retoured, to issue his precept for infeftment to the sheriff of Edinburgh, or to grant other directions according to law.

This petition, which was presented in the end of the winter session, appearing of importance, was ordained to lie over to this day; and, being then moved, it was said for the petitioner, That it did not appear the Prince ever had a chancery, but the method in practice had been, to obtain brieves out of the King's: That the charters of the lands bore them to be annexed to the shire of Renfrew; and that there were among the petitioner's writings, two precepts for infefting his predecessors, at a time when there was no Prince, directed to the sheriff of Edinburgh.

The Lords found, "That brieves ought to be obtained out of the King's chancery, directed to the sheriff of Edinburgh, for serving the petitioner heir to his predecessor."

The Lords gave the above interlocutor, as they had the direction of the chancery; but gave no directions in what manner the petitioner ought to be infeft; though, from their reasoning, their opinion appeared to be, that a precept behoved to be obtained from the Prince's commissioners, which might be directed to any person whatever.

Per *H. Home.*

Fol. Dic. v. 3. *p.* 360. *D. Falconer, v.* 2. *No* 135. *p.* 153.

DIVISION XIV.

Sheriff-Court.

No 366. 1623. *February* 22. Lindsay *against* Crawfurd.

In an action betwixt Lindsay and Crawfurd for certain viccarage teinds of the parochin of Kilbride, question arising *obiter* anent a decreet of spuilzie of teinds given by the sheriff of Lanerk, it being *alleged*, that it was null, as given *a non suo judice*, the sheriff not being judge to grant an inhibition, could not be judge to the spuilzie following upon the contempt thereof; the

other *answering*, that he was judge to repairing violence done within the shire, the LORDS would not annul the decreet by way of exception. No 366.

Fol. Dic. v. 1. *p.* 510. *Haddington, MS. No* 2780.

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

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.

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 flagante 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.

Act. *Lawtie.* Alt. *Mowat.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 510. *Durie, p.* 371.

1631. *March* 26. SEATON *against* HUME.

No 368.
Found, that Sheriffs are competent judges in actions pursued against defenders, as charged upon 40 days, to enter heirs to their predecessors.

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 allegeance, 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.

Fol. Dic. v. 1. *p.* 510. *Durie, p.* 586.