

1622. *March 16.* FORBES *against* BAILIES OF ABERDEEN.

ONE Forbes in Montrose having charged one of the Bailies of Aberdeen, to take ———, burgess in Aberdeen, debtor to the charger; the Bailie suspended upon this reason, that he could not be compelled to take him upon the first charge, but that the party behaved to use and raise new letters, and a second charge, before there were necessity to the Bailie to take the party; *2do*, That the Bailie could not be compelled to take the party debtor, seeing he was brother to the Bailie, against whom he could not be compelled to use such rigorous execution of caption, seeing there were other three Bailies within the town, whom he might more conveniently charge to execute that caption. THE LORDS found none of the reasons relevant, and therefore sustained the charge against that same Bailie.

No 11.

Act. ———.

Alt. ———.

Clerk, *Gibson*.

Fol. Dic. v. 2. p. 167. Durie, p. 22.

1622. *July 14. and November 30.* SIBBALD *against* BLYTH.

FOUND that a Bailie in burgh, who takes not the rebel, being exhibited to him, is obliged to pay the debt; and albeit the Bailie thereafter take the rebel *post intervallum*, and put him in ward, yet that relieves him not of the payment, because at that time he took him not, being in his hands and power. This exception being proponed for David Sibbald Bailie in Perth against John Blyth in Dundee, for the taking Andrew Mathie, that he thereafter took him, and put him in ward where he remains in as good state, was repelled by interlocutor.

No 12.

Fol. Dic. v. 2. p. 168. Kerse, MS. fol. 227.

1623. *March 13.* BAILIES OF DUNSE *against* MUDIE'S CREDITORS.

THE Bailies of Dunse, which is but a burgh of barony, being charged to take Robert Mudie, who was rebel at the horn, and having suspended on this reason, viz. that they being but Bailies of a burgh of barony, they ought not to be compelled to execute such charges, if any should be directed against them, in respect their jurisdiction and authority extended only to execute decreets and acts of their own courts, and that their power might go no further, and that it is against equity to urge them to do that which their power will not answer; the LORDS found, that Bailies of burghs of barony ought not to be compelled, and so ought not to be charged with such charges as to take the King's rebels; but all such charges should be directed to officers and Magis-

No 13.
Bailies of burghs of barony cannot be compelled to take a rebel.

No 13.

trates of greater power and authority than Bailies of baronies, either where there was erection of burghs of baronies, or where there was no burgh; and therefore found the reason relevant; albeit it was alleged against the reason of the chargers, that they had ever been in use before to execute such charges for apprehending of rebels, which use was not respected by the LORDS; and therefore they suspended the charge against them *simpliciter*.

Fol. Dic. v. 2. p. 166. Durie, p. 59.

* * * Haddington reports this case:

THE Bailies of Dunse being pursued for not taking Mudie, being at the horn, according to the charge executed against them; the LORDS found, that they being only Bailies of a burgh of barony, could not be lawfully charged by the King's letters to take horners, they not being the King's officers. It being known, that few of the Bailies of burghs of barony were of power to take rebels.

Haddington, MS. No 2809.

1623. November 20. L. AITON against AITKIN.

No 14.
The rebel
must be en-
tered at the
precise day.

THE L. of Aiton being obliged by bond to enter Mr Alexander Hume in ward, who was taken with caption at the instance of George Aitkin, and this bond bearing, that either he should enter him at a certain day contained in the bond, or else to pay the sum for which he was denounced and taken; whereupon Aiton being charged to pay the sum for not entry of the rebel; he suspends upon this reason, that at the day appointed for entering the rebel, he and the said Aitkin to whom he was debtor, were trysting among themselves anent a transaction for the debt, which put the defender in *bona fide* not to keep the precise day of the bond; and how soon he knew that they had not agreed, he within four or five days after the day appointed by the bond, offered to enter the rebel, at which time he was always in as good estate as he was at the day contained in the bond, and at the time of the granting thereof; which ought to be found sufficient to purge the failzie, and to liberate the suspender, seeing the charger could not qualify any prejudice sustained by him, by not keeping of the precise day of the bond; likeas he yet offered to enter him in the same estate he was in at the time of the giving of the bond, *et cum omni causa*. THE LORDS found the letters orderly proceeded notwithstanding of this reason, because the rebel was not entered at the precise day contained in the bond.

Act. *Hope et Belsbes.*

Alt. *Nicolson et Forbes.*

Clerk, *Gibson.*

Durie, p. 81.