

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.*

\* \* \* Haddington reports this case :

It is lawful for a party to take a man, obliged under the pain of a sum, to enter a rebel in his house, to remain there prisoner till he pay the debt owing to him, and to exact the penalty, if the party obliged enter not the rebel at the day.

No 14.

*Haddington, MS. No 2930.*

\* \* \* Kerse also reports this case :

FOUND, that a Bailie should pay the debt for letting the rebel free, notwithstanding he offered to prove, that he put the rebel thereafter in ward *in eodem statu, cum omni causa*, and that he was yet in ward.

*Kerse, MS. fol. 227.*

1624. February 12. L. LANGTON *against* BAILIES of DUNSE.

THE L. of Langton pursuing the Bailies of Dunse, for demitting of his debtor, whom upon charges of caption they had apprehended and put in ward, and thereafter had let him go free; the LORDS assoilzied them from the pursuit, because the town of Dunse was but a burgh of barony, who had not that power nor authority, whereby they might be compelled to take rebels; and as they could not be compelled to take them, so being taken by them, they had no necessity to detain them, but might demit them; and albeit the letters of caption gave command to all Magistrates, both in burgh and in land, to execute the letters, and so it might appear that the charge should extend to them who were Magistrates to lands, if they were not of a burgh-royal; the LORDS found, that that clause of the letters, to charge Magistrates to burghs, ought to be understood of royal burghs, and that to charge Magistrates to land ought to be understood of Sheriffs and Stewarts, and sicklike Magistrates, and ought not to extend nor be understood of burghs of barony and Magistrates thereof.

No 15.

*Act. Belbes.*

*Alt. Nisbet.*

*Clerk, Gibson.*

*Fol. Dic. v. 2. p. 166. Durie, p. 109.*

\* \* \* Haddington reports this case :

ANE baron bailie can not be charged by letters of caption upon horning to take a rebel, or to detain him when he has taken him, because he is not the King's officer, but the baron's; and as the baron is not a judge or officer to be charged to take rebels, far less can his bailies be charged.

*Haddington, MS. No 3004.*