

* * * 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.