

before the same charge, for verifying whereof they produced a testificate subscribed by Sir Jeromy Lindsay, Lyon King at Arms, bearing, That he had deprived him, and had caused lawfully publish the same. THE LORDS found not this testificate sufficient, but astricted the excipients to prove, that the officer was deprived, either by production of a decreet of deprivation, or by production of a lawful publication of his deprivation; either of the which being positively alleged, viz. either that he was deprived by a sentence, or that there was publication made of the deprivation, albeit they alleged not a sentence preceding depriving him, but only that publication was made that he was deprived, the LORDS found any of these two relevant, and any of them being proved, to be sufficient to elide this pursuit. See PROOF.

Fol. Dic. v. 2. p. 166. Durie, p. 226.

No 18.
hended had
been deprived
by a sentence,
or *separatim*,
that publica-
tion had been
made of his
deprivation.

1627. February 24. BROWN against SHERIFF of WIGTON.

A SHERIFF that puts a rebel taken by him in the ward and burgh, cannot be pursued for the sum addebted by the rebel, if he escape out of the ward not by the Sheriff's permission.

Fol. Dic. v. 2. p. 169. Auchinleck, MS. p. 212.

No 19.

* * * Durie reports this case :

1627. March 2.—IN an action, Brown son to Mr William Brown against the Sheriff of Wigton, for payment of a debt owing to the pursuer, because after his debtor was taken by letters of caption by the Sheriff, and put in ward by him in the tolbooth of Wigton, which is the head burgh of the sheriffdom, he escaped, the LORDS found no action against the Sheriff of the sheriffdom who had taken the rebel, and put him in prison in the town; because thereafter *functus erat officio* as to the rebel's escaping out of prison, except he had been actor, or accessory to his escaping.

Act. *Cunninghamc.*

Alt. *Belshes.*

Clerk, *Scot.*

Durie, p. 284.

1627. March 21. E. CASSILLIS against AITKIN.

IN an action at the instance of the Earl of Cassillis against Aitkin, to hear and see it found, that he as Bailie to the Bishop of Galloway (who hath not the lands of that bishoprick in a regality), is not subject nor obliged in law, by vir-

No 20.