

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. *Belsher.*

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.

No 20. tue of charges of caption executed against him *eo nomine* as the Bishop's Bailie, to take rebels; and that no such charges shall take effect against him, to cause him take rebels in time coming; the LORDS sustained this action, and the general desire of that summons, albeit one party was only called thereto, who had executed the like charges against him *eo nomine*; and the LORDS found, that Bailies to Bishops, or Baron-bailies, are not subject in law to apprehend rebels; these Barons, or Bishops' lands, not having regality, nor some other the like or more sovereign power of jurisdiction, than as Baron or Bishop's Bailie.

Act. Nicolson.

Alt. Scot.

Clerk, Gibson.

Fol. Dic. v. 2. p. 166. Durie, p. 293.

1628. July 18.

CRICHTON *against* WATSON.

No 21.

ROBERT CRICHTON Sheriff in that part of _____, viz. Dumfries, being charged by Andrew Watson to take the Laird of Otterburn, suspends the first charge, alleging it to be null, because the charger did not show the rebel to him, nor offered to go with him foot for foot to search for him. To which it was *answered*, That not only the Sheriff did no diligence after the charge to take the rebel, but it was offered to be proved by the Sheriff's oath, that he saw him diverse times after the charge. THE LORDS ordained the letters to be put to farther execution.

Fol. Dic. v. 2. p. 167. Auchinleck, MS. p. 213.

No 22.

1628. November 18. RAE *against* BAILIES of DALKEITH.

A MESSENGER charges J. D. and A. W., Bailies of Dalkeith, to apprehend the Laird of Mains, on Sunday, at the instance of James Rae, and the messenger delivered but one copy to one of the Bailies instead of both. J. D. suspends the charge, because he got not a copy; *2do*, By an act of Council messengers are discharged to execute any letters of caption on Sunday. THE LORDS repelled the first reason, but found the second relevant.

1628. November 19.—The like was decided; but it being *replied* that the pursuer offers to prove, that the rebel was in company of the said Bailies one or other of them, since the said charge, within the bounds of the regality. THE LORDS found the reply relevant to be proved by the oath of the defenders.

Auchinleck, MS. p. 22.

*** Durie's report of this case is No 94. p. 3754., *voce* EXECUTION.