

No 207. trial by an assize. THE LORDS found, That the sheriff cannot impose an unlaw of L. 50, except the fact had been tried against the party committer by an assize; and that nevertheless his absence was the reason, for the which trial could not be taken by an assize; for an assize cannot be admitted, but where the party is present. THE LORDS found that his contumacy could not excuse him from some penalty, in which the Judge might unlay him for his absence, which they found ought not to extend to as great an unlaw, as if it had proceeded upon trial of the fact, but that it ought to be moderated, and therefore they modified the same to an unlaw of L. 10.

Act. ———. Alt. *Miller*.

*Fol. Dic. v. 1. p. 501. Durie, p. 107.*

\* \* \* Haddington reports this case.

JAMES SANDILANDS, baxter, being convened before the sheriff, for oppression done to Margaret Robertson at the West-port, by striking her to the effusion of her blood, he not compearing was unlayed in the pain of L. 50 to the sheriff of Edinburgh for the blood *in pœnam contumaciæ*, without probation or conviction; and, by another sentence at the instance of the party, was decreed to pay to her, the sum of L. 30, for reparation of the wrong and skaith sustained by her. The decreets being suspended, the LORDS found the first sentence null, as given without probation; and found the decreet at the instance of the party lawful, as given against Sandilands compearing upon probation, and in respect of that probation for eschewing unnecessary pleas amongst the parties, ordained Sandilands to pay L. 10 to the sheriff.

*Haddington, MS. No 2998.*

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No 208. 1628. December 6. CRIGHTON, Sheriff of Nithsdale, *against* WILSON.

IN a suspension of a decreet given by the sheriff against a party being cited for blood, for payment of L. 50 as for unlaw, for his contumacy for not compearance, it was not sustained, but the unlaw was modified to L. 10, and the decreet ordained to stand for that quantity only; seeing the penalty which the inferior judges have power to inflict for contumacy, was found ought not to exceed that sum.

Act. ———.

Alt. *Miller*.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 501. Durie, p. 406.*