

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.*CRIGHTON *against* WATSON.

No 21.

ROBERT CRIGHTON 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.

* * * Spottiswood reports this case :

No 22.

THERE WAS a charge given at James Rae's instance to the Bailies of Dalkeith, Archibald Weddel and James Douglas, for apprehending of the young Laird of Mains; the execution bore, that the officer gave the charge to them being both together in Dalkeith, and the rebel with them, and that he delivered a copy to Archibald one of the Bailies, in name and behalf of both. They being pursued for disobeying the charge, James *alleged*, That he ought to be assoilzied, because the execution bore not that there was a copy delivered to him. However, in respect he was present and saw it delivered to his fellow, the Lords sustained the charge. Next *alleged*, the charge was null, because it was delivered on a Sunday, as they were going to the kirk at the ringing of the last bell. THE LORDS found that the charge was not null, but yet that the Bailies were not obliged to obey, being given at such a time. And this has been found before betwixt Rachelet Frenchman and Sir Lewis Lauder, *voce* SUNDAY. To meet this last allegiance, it was *replied*, That the pursuer offered to prove that the rebel was in their company since, at which time they should have apprehended him by virtue of the former charge. Which reply was found relevant to be proven by the oath of the defenders.

Spottiswood, (CAPTION.) p. 31.

1629. November 21. LOCKIE *against* BAILIES of GLASGOW.

No 23.

IN an action against the Magistrates to pay the debt, because the debtor being incarcerated in their ward escaped, the LORDS found an exception relevant to produce liberation to the Magistrates, viz. that the debtor by instruments of iron in the night time, broke up the lintel of the window in the prison-house where he was detained, and escaped thereat, which was a case like to *casus fortuitus*, for which they cannot be answerable, neither can be *in culpa* thereby, specially seeing that same night of his escape, the Magistrates sought him in all the parts of the town, and upon the morrow and next day thereafter searched and sought him through the country; which manner of escaping and diligence done immediately thereafter, was found relevant to liberate the Magistrates, seeing it was not alleged, that either the Magistrates, or any of the under officers, or keepers of the goal, were accessory to the escape.

Act. Lawrie.

Alt. Aiton & Cuninghame.

Clerk, Hay.

Fol. Dic. v. 2: p: 170. Durie, p: 398.