

No 24. 1629. *March 27.* ———— *against* ROBERTSON.

JAMES ROBERTSON, Bailie of Inverness, was charged to take a rebel, being in company with the Bailie in a house in Inverness; and for disobedience is charged for the sum addebted by the rebel. It was *alleged* by the Bailie, That the horning whereupon the caption was granted was not produced. *2do*, That the Bailie was not obliged to take the rebel upon the first charge. THE LORDS repelled the allegiances.

Auchinleck, MS. p. 23.

No 25. 1629. *June 23.* ROSS *against* ROBERTSON.

THE said James Robertson being pursued for not taking a rebel at the instance of one Ross; it was *alleged* by the defender, That all parties having interest were not summoned, viz. the rebel, who, if he had been called, might have alleged, that he made payment to the pursuer. THE LORDS found it not necessary to summon the rebel.

Auchinleck, MS. p. 23.

* * * Durie's report of this case is No 34. p. 2193., *voce* CITATION.

* * * Spottiswood reports this case :

1629. *June 25.*—N. Ross pursued James Robertson Bailie of Inverness, to hear and see him decerned to pay to the pursuer L. 1000 for not apprehending a rebel, being charged with letters of caption for that effect. *Alleged*, No process, because all parties having interest were not summoned, viz. the rebel, who being called might allege payment or transaction. THE LORDS repelled this allegiance.

The like found between Douglas and Dunbar Bailie of Tain, 26th March 1634. for when one is convened *ex proprio delicto*, there needeth no other to be summoned thereto.

Spottiswood, (CAPTION.) p. 32.

No 26. 1629. *July 30.* MALACHIE *against* LAIRD of RENTON.

THE Laird of Renton, Sheriff of the Merse, being charged at the instance of Mungo Malachie, burgess of Edinburgh, within the town of Edinburgh, to take Sir George Home of Manderston, who was not then in Edinburgh, but dwelling in Berwick, and for disobedience is pursued to pay the sum of 1100

merks, addrested by the said Sir George to the said Mungo. It was *alleged* for the Sheriff, That the charge was not good, because it was *extra territorium*, neither did the party offer to shew him the rebel, or to go foot for foot with him as he ought to do. To which it was *replied*, That the pursuer offered to prove, that the Sheriff was with the rebel diverse times since the charge given, which is relevant, as he was of sufficient power to take him; and being urged to condescend, he *alleged*, that the rebel had been diverse times in the Sheriff's own house, accompanied by one and himself.—Undecided.

Auchinleck, MS. p. 23.

No 26.

1630. *January 16.* ROXBURGH against RENTON.

ROXBURGH had charged Renton, Sheriff of Berwick, to take and apprehend a rebel, and delivers him to the Bailies of Dumfries. After warding, the rebel escaped. The creditor pursues the Sheriff for the debt. THE LORDS absolve him in respect of his diligence.

Auchinleck, MS. p. 213.

No 27.

1630. *June 12.* MOWAT against The MAGISTRATES of STIRLING.

MR ROGER MOWAT's charges being suspended by the Bailies of Stirling, who were charged by the first letters upon caption to take one Archibald, rebel, his debtor, wherein the Magistrates disputing, That seeing they had done diligence to take him, and searched for him in the town, and offered to pass with the officer, to take him in any part within their jurisdiction where he would shew them the rebel, as instruments produced bear, therefore they contended, that this obedience of their's should free them, and that letters of horning could not be directed upon the second charge against them, as use was in these cases, while they were charged again of new by other new letters of caption, which supplied again the first new charge and the first letters; seing by their obedience foresaid, these first charges behoved to be held as extinct, and as if they never had been charged by virtue thereof; and the charger *alleging*, That that obedience given by the Magistrates at that one special time, when they were charged by the officer, could not liberate them for time to come; but that the charge once given to them was sufficient, and ought to be effectual to make them liable at any time thereafter to take the rebel, whensoever they should find him within their jurisdiction, and might take him without necessity to use a new charge against them for that effect; for it were a great iniquity, that such obedience at that time should ever liberate the Magistrates, for then at any time thereafter they might converse with the rebel, and intercommune and traffick with him

No 28.

Magistrates being charged to take a rebel for debt, are obliged at any time thereafter, without a new charge, to apprehend him, if it is in their power.