

1630. July 14.

JOHN HAY *against* SHERIFF of KINCARDINE.

THE Earl of Marischall, Sheriff of Kincardine, being charged to take James Keith, at the instance of John Hay, burges of Aberdeen, *in anno* 1629, and for not obeying, the Sheriff is pursued for the sum, 2d July 1630. It was *alleged* for the Sheriff, That he was willing to have taken the rebel, but the pursuer offered not to go with him to shew where he was; likeas, yet he was content to take a day for taking and putting him *cum omni causa*. To which it was *replied*, That the pursuer offers him to prove, that diverse times the rebel was in the Sheriff's house since the charge, and in his company; he might have taken him, and that within a year after the charge; neither was it reason now, after so long a space, the Sheriff should offer to present the rebel; which offer the LORDS repelled, and admitted the reply to the probation of the pursuer. But this was so controverted, that it was delayed to be reasoned again, and further heard.

*Fol. Dic. v. 2. p. 167. Auchinleck, MS. p. 23.*

\* \* Durie's and Spottiswood's reports of this case are No 15. p. 7792.

*voce* JUS TERTII.

1634. March 26.

DUMBAR *against* PROVOST of ELGIN.

ONE Dumbar pursuing the Provost of Elgin for payment of a debt owing to him by ——— his debtor, who was rebel, and for not taking of which rebel he had charged the defender, as is usual in such cases, and for not doing whereof he had pursued the Magistrates; who *alleging*, That seeing the rebel, who was debtor, was dead before the intenting of this action, therefore, that no process can be granted against them, while the decret were first transferred in some to represent him; this allegiance was repelled, and the action sustained, without necessity of transferring in the person of any to represent the principal debtor, seeing the heirs and executors to represent him were called in this pursuit for their interests; which the LORDS found enough, and so sustained the action. See TRANSFERENCE.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 168. Durie, p. 717.*

1634. November 11.

BROWN *against* TOWN of INVERNESS.

ALEXANDER BROWN pursues the Proyost and Bailies of Inverness for payment of a debt of L. 90 owing to him by his debtor, because his debtor being incar-

No 29.

A charge given to a Magistrate to take a rebel, is good for a year and a day.

No 30.

No 31.  
Magistrates found liable