

1622. *January 30.* STEWART of the Merse *against* LAIRD of Wistnisset. No 205.

A FINE for a bloodwit of L. 100 Scots, imposed by a vassal of the King, who was not a Baron, was modified to L. 27.

Fol. Dic. v. 1. p. 501. Durie.

* * * This case is No 10. p. 7299.

1622. *March 16.* L. BOQUHEN *against* L. CLUNIE.

No 206.

IN an action of suspension pursued by L. Boquhen *contra* L. Clunie, for suspending of a decret given by L. Clunie against Boquhen, for his unlaws for absence from the head-courts holden by Clunie, as Bailie-depute of the bishoprick of Aberdeen, which unlaws for absence from ilk court, were decerned each unlaw to L. 40; the LORDS found, That the unlaw for absence from any Baron's head-court, should not exceed L. 10; therefore modified ilk unlaw in the sentence to L. 10.

Act. Baird.

Alt. Lawtie.

Clerk, Gibson.

Fol. Dic. v. 1. p. 501. Durie, p. 22.

* * * Haddington reports this case :

IN a suspension raised by the Laird of Boquhen of a charge used against him by Clunie Gordon, for unlaws for not compearing at the Bishop of Aberdeen's head-courts, before Clunie the Bishop's Bailie; the LORDS found, That the unlaw of a Baron's court should not exceed L. 10; and that the vassals could not be unlawed, unless the head-courts had been kept at the ordinary days usually observed; and if the Lord or Bishop changed these days, the vassal should be particularly warned to the court.

Haddington, MS. No 2614.

1624. *February 7.* SANDILANDS *against* ROBERTSON.

No 207.

IN an action betwixt Sandilands and Robertson, for suspending and reducing of a decret given against him by the sheriff of Edinburgh, whereby the reducer of that decret was ordained by the said sheriff to pay an unlaw of L. 50, for not compearance before them, being cited for a blood committed by him; this decret for the sheriff's unlaw foresaid, was given *in pœnam contumaciæ*, there being no other cause of the sentence, but only given in absence, and for the parties not compearance, without any probation of the fact, or

No inferior judge can unlaw in more than L. 10 Scots, for contumacy. This found with respect to a sheriff.

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.

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.