

than that in all such actions, of which there have been several late instances, the Justices are only called as defenders who sign the warrants.—And as to the supposed ignorance of the Justices, founded upon the practice of the country, the statute of the 5th of the late King is *in viridi observantia* over the whole country. *2do*, Two of the Justices are advocates in Aberdeen, in the practice of the law ; and therefore are presumed to know it. *3tio*, By a letter written to them by Mr Walker, immediately after signing the warrant for pointing, they were put upon their guard, of their having done an illegal thing, and that complaint would be made of it, if the pointing should be executed. And, *lastly*, They appeared to have had in their hands, or to be in the knowledge of the statute of the 5th of the late King, as they grant their warrant for levying the fines agreeable to the direction of that statute. Further, it appears, that at executing the pointing, the officers had an intimation made to them, before witnesses, of their being executing a warrant which had been granted contrary to law.

“ THE LORDS found, that the act of Parliament *5to* Geo. I. does so far repeal the former acts, as to limit the time for calling out people liable to work before harvest, that it should be before the end of June ; and as the pursuers, in this case, were warned to work at the high-ways in August, found the warrant granted for pointing their effects for not-compliance, and the pointing thereupon, was irregular ; and therefore found the defenders liable to the pursuers in restitution of the goods libelled, and expenses of process.’

Reporter, *Colston*.

Act. *Montgomery*.

Alt. *Rac*.

D. R.

Fol. Dic. v. 3. p. 359. Fac. Col. No 261. p. 483.

DIVISION XII.

Lyon Court.

1627. December 12.

A. against B.

No 353.

A MESSENGER being employed by letters to take a rebel, after the taking suffers him to escape ; the creditor pursues the messenger before the Lyon for the sum addebted by the rebel to him. The messenger raises advocacy, as not pertaining to the Lyon to judge. THE LORDS advocate the cause.

Fol. Dic. v. 1. p. 509. Auchinleck, MS. p. 8.