

## M E S S E N G E R.

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1610. *June 21.*      ROSSYTH *against* M'GILL.

**A**N officer, directed to charge for payment, under the pain of horning, has no power to receive the payment, and discharge the same, unless he deliver it to the party, and report his acquittance, whereby he allows it; but if an officer point and apprise, and make penny; or, after pointing, offer to the party, and receive payment to him, that will relieve the defender of the debt, by the payment made to the officer, in that manner.

No 1.

*Fol. Dic. v. 1. p. 573. Haddington, MS. No 1906.*

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1628. *February 13.*      KELLO *against* MACKISON.

IN a pursuit by Mr John Kello *contra* Eleazar Mackison and Hunter, for payment of L. 600, addebted to the pursuer by Innes of Crombie, because they being messengers, were employed by the pursuer to take the said debtor, being rebel, and to put him in ward; likeas they took him, and after taking, in place of putting him in ward, they put him in Gilbert Hunter's house, who was a private man, whereout they suffered him to escape, and pass to freedom; and therefore craving payment from them of his debt; this action against the messengers was sustained, and found relevant (bearing the tenor foresaid,) to produce this action and effect: Likeas the same was sustained to be proved, as accords of law; and it was not found necessary, that the pursuer ought and should prove, either the employment of the defenders by him, to take the rebel, or any other point of the summons, by writ, or oath of party, but sustained it as said is, to be proved otherways *prout de jure*. See PROOF.

No 2.

*Fol. Dic. v. 1. p. 573. Durie, p. 345.*