

No 25. and therefore preferred Simson, and found the letters orderly proceeded; but prejudice to Watson to raise his reduction for the duties in time coming.

*Fol. Dic. v. 1. p. 171. Stair, v. 1. p. 665.*

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S E C T. VI.

Objections to Hornings, whether proponable by Exception.

No 26.

Found, that a horning cannot be taken away by exception.

1583. *July.*

LOGAN *against* CARLILE.

THERE was ane Logan, who, having obtained the gift of the escheit of George Douglas of the Parkhead, pursued Michael Carlile for intromission with certain teinds pertaining to the said George.—It was *alleged* be the defendar, That the horning whairupon the gift proceeded was null in the self, because it was execute, and he denounced rebel at the market cross of Edinburgh and Lanerig; and truth it was, that he dwelt in the mean time in Kirthoril, and the said towns were not the head burghs of the shires whair he dwelt in the mean time, and swa conform to the last practice betwixt Angus and Home, *voce* EXECUTION, the said horning was null in the self; and that he offered him to prove conform to his allegiance, that he dwelt in the mean time in Kirthoril.—To this was *answered*, That he could not now be heard to oppone his allegiance, be way of exception; but the said horning ought to stand still quhill it were reduced *via actionis*, for otherways he would offer him to prove with the exception.—THE LORDS fand be interlocutor, That the horning could not be tane away be way of exception; *licet nonnulli dominorum in contraria fuerunt opinione*, that it was *nullitas juris* and might, conform to the act of Parliament, be tane away be way of exception.

*Fol. Dic. v. 1. p. 171. Colvill, MS. p. 236.*

1590. *March.*

COMMENDATOR OF KILWINNING *against* LAIRD OF BLAIR.

No 27.

Found as above.

THE Commendator of Kilwinning being put to the horn be the Laird of Blair, his grand-father, the gift of his escheat for being year and day at the horn, was taken to his own son; and upon the said gift they pursued for a declarator. Gavin Hamilton of Raplock having also obtained a gift of the Commendator's escheat and liferent, for being year and day at the horn, for some other cause,

persewit also to have an declarator upon his gift.—It was *alleged* be Gavin, who had the second gift, That the hornings, and executions thereof that were produced for the Commendator's son were null, because the letters and charges whairupon the executions of horning passed, were for the payment of ane minister's stipend, the whilk stipend was paid, and for that cause acquittance being produced, the letters were suspended, and so the cause being taken away whairupon the horning proceeded, the horning behoved to fall and be declared null.—To this was *answered*, That albeit the letters were suspended, yet there was no relaxation frae the horning standing. The King's Majesty had ay good cause to dispone the escheat to the donatar, and the horning could never be tane away without a relaxation, but be way of action or reduction. The other party *alleged*, That the same in respect of the suspension might be taken away be exception.—THE LORDS found, That they would not take away the horning be way of exception.

No 27.

*Fol. Dic. v. 1. p. 171. Maitland, MS.*

1621. December 14. E. WINTOUN *against* —.

IN a declarator of escheat, pursued at the Earl of Wintoun's instance, against —, wherein it was *alleged* that the horning was null, seeing the party denounced, the time of the denunciation dwelt within the regality, and he not denounced at the head burgh of the regality;—THE LORDS repelled that nullity against the horning standing, and would not admit the same in that judgment, consisting *in facto*, and which could not be instantly verified, to stay the declarator; neither would in that judgment find it necessary to astrict the pursuer to prove that the rebel dwelt within the regality, in fortification of his horning, but prejudice to the party to reduce the horning upon that nullity, *prout de jure*.

No 28.

In a declarator of escheat, the Lords refused to receive, by way of exception, an allegiance, that the party dwelt *alibi* at the time of the charge, than where the execution expressed; but it was reserved to reduce the horning.

Act. *Hope*.

Alt. —.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 171. Durie, p. 7.*

1625. June 23. SOMMERVILL *against* GRANT.

HORNING found null upon an act of kirk-session for contribution to the schoolmaster, because the party was not cited, nor consented not. This found by way of exception.

No 29.

A horning found null by exception.

*Fol. Dic. v. 1. p. 171. Kerse, MS. fol. 220.*