

1590. ———. / WEDDERBURN against ———.

No 4.

A HORNING not proceeding upon the LORDS' letters, but only upon a written command given to the party by the King, charging him not to intromit with certain teinds under the pain of rebellion, whereupon the disobeying was denounced; the LORDS refused to sussain it to debar the party *ab agendo*.

*Fol. Dic. v. 2. p. 84. Spottiswood.*

\* \* \* This case is No 2. p. 5731, *voce* HORNING.

1609. November 11. THOMSON against RAMSAY.

IN an action betwixt Thomson and Ramsay, for annulling a horning, it was *alleged*, That the pursuer should have no process, because he was rebel unrelaxed. He *answered*, That he might stand in judgment notwithstanding this horning, because his summons was for annulling thereof. THE LORDS found, that because the event of the plea was uncertain, that he should suspend and relax himself, because the defender would be greatly prejudged if he should have process, and make no surety for his satisfaction, in case he failed in his reduction; but they resolved if the cause of the horning was so great as the pursuer was not able to find caution, that they would grant suspension and relaxation *super juratoria cautione*.

No 5.  
A person debarred by horning might proceed in his defence on finding caution, and if he could find no other, juratory caution.

November 18.—IN an action of annulling, and improbation of a horning, between Thomson and Ramsay, wherein Hew Maxwell had interest, the party denouncer, donatar to the rebel's escheat, the treasurer, advocate, and all other parties having interest being called, it was *alleged* by the pursuer, that the horning called for should be decerned to make no faith, because it was not produced. The donatar compearing, and defending, *answered*, that no such certification could be granted, because he had produced the extract lawfully subscribed, which satisfied the production, seeing it contained the tenor of the letters, and of the executions. The pursuer *replied*, That the extract was not the principal, and could not subsist without the warrant of the principal letters and executions thereof, which not being produced, the extract could make no faith, especially seeing the donatar had done no diligence against the denouncer for production of the principal letters, seeing he was called to that effect by the pursuer in this same summons; and albeit the said donouncer would not compear and produce, that could not hurt the donatar, who had the King's right and place; and if hornings were decerned to make no faith for not production of the principal letters, the King should never get an escheat, because