

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

No 5.

the party denounced and registered, agreeing with the denouncer, and satisfying him, should get the principal letters in his hands, and destroy them, and so defraud the King of his casualty; whereas upon the other part, if the extract should be registered to satisfy the production, the verity of the executions might be tried by the officer and witnesses therein contained; likeas, in this case, the collusion was manifest in respect of the collusion betwixt the denouncer and this pursuer, who having satisfied the denouncer, had obtained relaxation upon production of his acquittance; in respect whereof, the LORDS found, That the production of the extract satisfied the production, therefore they would not grant the certification for not production of the principal letters. It was *alleged*, that the contrary was done betwixt the Laird of Kinneir, younger and elder, but that proceeded upon the officers' deposition, who declared he could not clearly answer in the improbation of the executions, and depone thereintil, while first he saw his own execution and subscription.

Fol. Dic. v. 2. p. 85. Haddington, MS. No 1638 and 1643.

1609. December 13. LAIRD RUTHVEN *against* KERR.

No 6.

A pursuer was debarred by a horning, although the writ which he founded on bore to be entered into for the behoof of another who offered to insist.

THE Laird of Ruthven's taking burden upon him for my Lord of Dirleton, contracted with Andrew Kerr and young Innermerk, anent the conquest from them of the lands of Fenton; in the which contract, Ruthvens took them bound to pay certain farms to my Lord of Setoun, or to him to my Lord of Setoun's behoof, and thereupon having charged Andrew Kerr to pay the said farms, and litiscontestation being made in the cause at the term of probation, witnesses being produced, Andrew Kerr gave in horning against Ruthvens. It was *alleged* the horning could not stay the reception of the witnesses, because Ruthven was not contractor nor party in this cause to his own behoof, but to my Lord of Setoun's, and therefore the witnesses behoved to be received to my Lord of Setoun's effect, to whose commodity Ruthven's pursuit tended; nevertheless, because the charge was raised by Ruthven, and the suspension only raised and executed against him, the LORDS found no process in respect of the horning.

Fol. Dic. v. 2. p. 84. Haddington, MS. No 1682.

No 7.

1609. December 21. DOIG *against* DEMPSTER.

A MAN summoned his party, who has put him to the horn, to hear and see him decerned to be restored, because the debt is paid to him, which he refers to his oath. THE LORDS will give no process to the pursuer, being debarred by that same horning.

Fol. Dic. v. 2. p. 85. Haddington, MS. No 1710.