

1628. July 11. DUNBAR *against* MUDIE.

No 71.
A donatar of escheat who produced the horning, in an action against magistrates for not taking a rebel, was not obliged to produce the preceding letters and charges.

IN a declarator, Dunbar *contra* Mudie, the LORDS found, That the donatar who sought the declarator upon a horning against the defender, for not taking of a rebel, whom he was charged to apprehend, by virtue of other letters direct against him for that effect, as use is in such cases, where the Magistrate or other officers are charged to take the rebels, were not holden to produce the said preceding letters and charges which were the warrants of the horning, but that it was enough to the donatar to produce the horning; and found the said horning sufficient, albeit the defender *alleged*, that there were no preceding letters to be the warrant of the said horning, and so that the horning was null; which was repelled in this place, without prejudice to the party to reduce thereupon *prout de jure*. This is no discrepant from the decision 16th January 1622, L. Drumlanrig *contra* L. Cashogill, No 8. p. 11690; except that here a stranger is donatar, who is not presumed to have the writ, which is proper to be kept in the hands of the party executor of the charge, and not in a third person's hands; and there, the donatar was that same person at whose instance the charge was executed, and so presumed to have his own letters.

Act. *Advocatus & M^cGill.*

Alt. *Nicolson.*

Clerk, *Scot.*

Fol. Dic. v. 2. p. 181. Durie, p. 388.

No 72. 1629. March 18. Laird of CAPRINGTON *against* PARISHIONERS of OCHILTREE.

IN an action of wrongous intromission of teinds, pursued by the Laird of Caprington against the parishioners of Ochiltree, upon an assignation of the tack of an half teinds of the said kirk set to my Lord Ochiltree, whereupon the said Lord had served inhibition, it was *alleged* by the parishioners, No process against them till the inhibition were produced. The LORDS found it might be produced *cum processu*.

Auchinleck, MS. p. 169.

No 73. 1630. March 18. Lady MAXWELL *against* TENANTS.

IN a removing against tenants at a Lady tercer's instance, the kenning was found sufficient to instruct this pursuit without necessity of producing the service; and this from analogy of a sasine, which is sufficient without producing the charter.

Fol. Dic. v. 2. p. 180. Durie.

* * This case is No 96. p. 2229. *voce* CITATION.