

her *stante matrimonio*, and so *quoad eam* null. *Replied*, The horning must stand good, proceeding upon a cause which was the proper fact and violence of the defender, viz. an ejection committed by her. *2do*, It cannot be taken away so summarily, but must abide reduction, because it proceeds upon a decret of ejection recovered against her and her husband; which they having suspended, the letters were found orderly proceeded against them compearing; and so the horning being founded upon decreets standing unreduced, cannot be taken away *via exceptionis*. *Duplied*, The horning and decreets are all null, in respect of her who was for the time cloathed with a husband. THE LORDS found the exception relevant. Yet afterwards the King's Advocate, lest it should pre- judge the King in other cases, made the parties pass from their allegiances with consent, and got the interlocutor cancelled.

No 10.

Spottiswood, p. 153.

*** This case is reported by Durie, *voce* HUSBAND AND WIFE.

1634. July 8.

L. LAUCHOP *against* —.

L. LAUCHOP having right from the donatar of umquhile Gavin B. of Gallo- way's liferent, after general declarator, pursues by special declarator, the in- tromitters with the duties of his benefice pertaining to him, of certain years addebted to the said umquhile Bishop, wherein the horning being produced whereon the gift and declarator proceeded; the defender alleged the horning to be null, because there intervned three years betwixt the execution of the charge and the denunciation; which allegiance was repelled, and notwithstanding there- of the horning found sufficient and well executed; because, before the denun- ciation there proceeded an intimation made to the umquhile rebel two days be- fore he was denounced; which intimation proported, that the party at whose instance the horning was executed, had obtained a protestation before the Lords of Session against a suspension of these charges, purchased by the said umquhile Bishop, by which protestation the letters were ordered to be put to execution, which being so intimated to the said umquhile Bishop by the officer, the Lords found the officer might thereafter denounce; and the denunciation being made within two days after the said intimation, it was found sufficient, and that there- needed no new charge to have been given by the messenger: For the alleged length of time that intervned since the said first charge, as the defender alleg- ed, ought to have been given before he could have been denounced, and that the intimation was not enough to warrant the denunciation without a new charge, especially such an intimation upon two days allenary before the de- nunciation; likeas they alleged, that if any intimation might be sustained to supply the charge, and sustain the horning, yet the same ought not to be upon so short a space as two days, but that there was requisite as many days to have

No 11.

A horning found good, though three years intervned betwixt the charge and the denuncia- tion, because intimation had preceded the denuncia- tion.

No 11. intervened after the making of the intimation, before the party could be denounced, as were requisite to the charge, after the expiring whereof, denunciation might be made by letters of horning and warrant thereof; so that if the charge was requisite to be given upon six days, or more or fewer as the warrant appointed, so the intimation ought to have been made upon no fewer before the officer could lawfully denounce; which allegiance was repelled, and the horning, with the intimation made, as said is, and the denunciation following thereon, were sustained.

Act. *Hamilton &c.*Akt. *Neilson.*Clerk, *Scot.**Durie, p. 724.*

No 12. 1662. *January.* M'LELLAN *against* BUCHANAN.

IN a suspension pursued by David M'Lellan against Arthur Buchanan, the LORDS found That Buchanan, as assignee to a bond granted to his cedent, and registerated after the cedent's death, could not charge thereupon, because the procuratory of registration dies with the death of the receiver, as well as of the granter.

Gilmour, No 32. p. 25.

1662. *January 1.* ALEXANDER BARNES *against* APPLGIRTH.

No 13.

Horning, upon a decree of the English Judges, was sustained, as their sentences were allowed to be challenged, on the matter, not the form.

ALEXANDER BARNES having, (conform to the act made by the Judges,) obtained letters of horning summarily at his instance, as heir to his brother James Barnes, upon production of his retour and a bond granted by Johnston of Applegirth; and thereupon having denounced him, and apprised his lands; Applegirth suspends on this reason, because the foresaid act of the Judges was now void; and by the late act of Parliament confirming their judicial proceedings, liberty is granted to quarrel and reduce them upon iniquity; and this was iniquity, to charge him summarily contrary to law.—The charger *answered, non relevat,* because he followed the order in use at that time; and the liberty of quarrelling is for injustice in the matter, and not in the order of proceeding; for then all their debates would be null, because they proceeded not upon continuation and letters.

THE LORDS sustained the charge as a libel, to the effect the suspender might have his defences, (if he had any) to be proved not instantly, but upon terms; but declared the apprising should stand valid for whatsoever was found due, but prejudice to the horning, as accords.

Stair, v. 1. p. 73.