

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.