

horning. The pursuer produced a horning to debar the defender, by which he was denounced by letters of intercommuning, upon account of conventicles.—It was *answered* for the defender, That the pursuer, who seeks the defender to compear, with certification, cannot debar him, or crave any certification against him, either to be holden as confest, or any certifications in reductions or improbations, which the Lords have often sustained, and allowed only pursuers to be debarred.

THE LORDS refused to suffer the pursuer to debar the defender to compear in any thing where his personal presence was requisite, but that he might be debarred from any other defences.

*Stair, v. 2. p. 446.*

1676. December 19.

TENNENT, YOUNG, and Others, *against* SANDY, Procurator-Fiscal of the Regality of Ogilface.

IN a declarator of a liferent escheat, it was *alleged*, That there could be no escheat upon the horning libelled; because it was upon letters directed by the Secret Council, upon a decret of a Regality court; and, by the acts of Parliament, the Lords of Session are only warranted to direct letters of horning summarily upon the decreets of Sheriffs and Bailies of Regality and other inferior judges.

THE LORDS thought that the Council could not direct letters of horning upon the said decret; seeing, before the acts of Parliament, letters of horning could not be directed upon the decreets of inferior judges summarily, without a decret conform before the Lords of Session; and statutes being *stricti juris*, the Council could not direct letters, unless by the same statute they had been warranted to that effect; and it appears, that the said statute was founded upon good reason and considerations, though they be not expressed, viz. That the Lords of Session are always sitting in the time of Session; and in vacance, there is some of their number appointed to receive and pass bills of suspension, if there be cause; whereas the Council sitteth but once a-week ordinarily in Session time, and in vacance but thrice; *2do*, The Lords do not pass suspensions but upon good reasons, and they are to consider the said decreets, which is not proper for the Council; *3tio*, As suspensions are raised of the said decreets, so oft times there is a necessity of raising reductions, and the Lords of Council are not competent judges to the reduction of the said decreets. But the Lords thought not fit that there should be a question betwixt them and the Council concerning their privilege; and therefore did forbear to give answer until some accommodation should be endeavoured. And it was proposed by some, that the decret of the Regality court being for keeping of conventicles, and that practice concerning so much the peace of the country, that all disturbance

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ders from deponing, or from any thing requiring their personal presence.

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Found that a horning directed by the Secret Council, upon a decree of a court of regality, was inept.

No 17. thereby might be prevented; and, upon that account, it being recommended to the Council, by act of Parliament, that they should see the laws against conventicles put effectually in execution; the Council, as they might convene the contraveners before themselves, may commissionate the inferior courts to proceed as their delegates; and upon their decreets given by them as delegates, that they may direct letters of horning.

Reporter, *Treasurer-depute.*

*Dirleton, No 406. p. 200.*

No 18. 1683. *March.* ARCHIBALD KER *against* Bailie RIDDEL.

IN the reduction of a horning upon this reason, That although the letters had been suspended as to a part of the charge, and found orderly proceeded for the remainder, yet the charger, after extracting of the decret of suspension, denounced the suspender without giving him a new restricted charge,

*Answered*; There was no necessity of a new charge for the decerniture, the letters, and charge to be put to farther execution, which imports, that any preceding execution must stand.

THE LORDS repelled the reason of reduction, and assoilzied the defender from it.

*Harcarse, (HORNING.) No 513. p. 143.*

No 19. 1687. *July.* MADDER of Langton *against* Lord TARRAS.

FOUND that horning against a tacksman did not hinder the sub-tacksman to repeat defences, though the sub-tack was set after the denunciation.

*Harcarse, (HORNING.) No 517. p. 144.*

1707. *February 28.* GORDON of Daach *against* DUFF of Dipple.

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A horning,  
not executed  
at the head-  
burgh of the  
shire where  
the party  
dwelt, on  
which no di-  
ligence was  
done to affect  
the debtor's

GORDON of Daach insists in a reduction of a disposition of certain lands granted by his debtor to Duff of Dipple, in prejudice of his more timely diligence against the said debtor by horning and denunciation, whereby he had the benefit of the last clause of the act of Parl. 1621, cap. 18. which provides, 'That if dyvours, or their interposed trustees, shall make any voluntary payment or right to any person, in defraud of the lawful and more timely diligence of another creditor, having served inhibition, or used horning, or other lawful mean, duly to affect the dyvour's lands or goods, or price thereof, to his be-