

1624. *March 6.*STUART *against* ———.

No 128.

A horning was found null, because no vestige of a stamp appeared, altho' the execution bore that the messenger had affixed his stamp.

IN an action of reduction of a horning, pursued at the instance of Mr James Stuart, commissary of Dunkeld, upon this reason, because it was not stamped; the reason was found relevant, and the horning found null, for the execution was not stamped, nor any vestige or appearance, that ever any stamp had been affixed thereto, albeit that the same bore these words of the officer, giver of the charge, viz. that 'for mair verification, his stamp and signet was affixed;' which words were not respected, seeing there was no appearance that the same had ever been stamped, for the horning was but lately executed, and the charge given in September 1623, so that the stamp might have appeared by some mark *in facto recenti*; but there was no dispute in this process for the defender, but only the horning produced by the defender, and the reason referred to the Lords.

Act. *McGill*.Alt. *Nairn*.Clerk, *Hay*.*Fol. Dic. v. 1. p. 267. Durie, p. 118.*1681. *February 4.*JAN VAN LOVAN and his FACTOR, *against* BRUCE of Newton.

No 129.

An inhibition was found null *quoad* a third party acquiring *bona fide* after the inhibition, because the executions were not stamped.

ALLEGED against an inhibition served on a dependence and a decret following thereon. *Answered*, No respect thereto, because the process which was the ground of the inhibition, was innovate by desisting from that process, and commencing a new one before the Bailies, whereon the decret followed. THE LORDS, before answer, ordained the precept and executions to be produced; which being done, they found the executions, not being stamped conform to the 32d act, Parliament 5. James III., and 74th act, Parliament 6. James V., nor subscribed conform to the 141st act, Parliament 12., James VI., they were null with the inhibition, and all following thereon, *quoad* a third party acquiring *bona fide* after the inhibition, and declared this should be a leading case, which they would follow in all time coming.

Fol. Dic. v. 1. p. 267. Fountainhall, MS.

* * This case is reported by Stair, *voce* LIS ALIBI PENDENS.—The like was found, February 1687, Maxwell against Wallace, No 80. p. 3743.

1686. *February 12.*The LORD LIVINGSTON *against* LORD JOHN HAMILTON.

No 130.

THE Lord Livingston, as donatar to the escheat of the late Earl of Callander, pursues a declarator against Lord John Hamilton, son to Duke Hamilton, who