

persewit also to have an declarator upon his gift.—It was *alleged* be Gavin, who had the second gift, That the hornings, and executions thereof that were produced for the Commendator's son were null, because the letters and charges whairupon the executions of horning passed, were for the payment of ane minister's stipend, the whilk stipend was paid, and for that cause acquittance being produced, the letters were suspended, and so the cause being taken away whairupon the horning proceeded, the horning behoved to fall and be declared null.—To this was *answered*, That albeit the letters were suspended, yet there was no relaxation frae the horning standing. The King's Majesty had ay good cause to dispone the escheat to the donatar, and the horning could never be tane away without a relaxation, but be way of action or reduction. The other party *alleged*, That the same in respect of the suspension might be taken away be exception.—THE LORDS found, That they would not take away the horning be way of exception.

No 27.

*Fol. Dic. v. 1. p. 171. Maitland, MS.*

1621. December 14. E. WINTOUN *against* —.

IN a declarator of escheat, pursued at the Earl of Wintoun's instance, against —, wherein it was *alleged* that the horning was null, seeing the party denounced, the time of the denunciation dwelt within the regality, and he not denounced at the head burgh of the regality;—THE LORDS repelled that nullity against the horning standing, and would not admit the same in that judgment, consisting *in facto*, and which could not be instantly verified, to stay the declarator; neither would in that judgment find it necessary to astrict the pursuer to prove that the rebel dwelt within the regality, in fortification of his horning, but prejudice to the party to reduce the horning upon that nullity, *prout de jure*.

No 28.

In a declarator of escheat, the Lords refused to receive, by way of exception, an allegiance, that the party dwelt *alibi* at the time of the charge, than where the execution expressed; but it was reserved to reduce the horning.

Act. *Hope*.

Alt. —.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 171. Durie, p. 7.*

1625. June 23. SOMMERVILL *against* GRANT.

HORNING found null upon an act of kirk-session for contribution to the schoolmaster, because the party was not cited, nor consented not. This found by way of exception.

No 29.

A horning found null by exception.

*Fol. Dic. v. 1. p. 171. Kerse, MS. fol. 220.*