

H O R N I N G.

1583.

LAIRD OF BISHOPTON *against* —

No 1.

THE Laird of Bishopton being denounced for not finding law-burrows, the horning was reduced at his instance, because the officer's execution bore not that the party seeker of the caution made faith to the officer, that he dreaded Bishopton bodily harm, according to the order prescribed in the act of Parliament, albeit the officer offered to prove by the witnesses inserted in his executions, that he had caused the party make faith.

Spottiswood, p. 147.

1590.

LAIRD OF WEDDERBURN.

No 2.

IN an action pursued by the Laird of Wedderburn anent the parsonage and teinds of Dunse, there was a horning cast in against him to repel him *ab agendo*. *Alleged*, That it was null, because it did not proceed upon letters of the Lords of Council and Session, but only upon a command given him by the king, subscribed by his Majesty, charging him not to intromit with the teinds of Dunse under the pain of rebellion; whereupon he disobeying was denounced. THE LORDS would not sustain it.

Spottiswood, p. 149.

1625. June 23.

VISCOUNT OF STORMONT *against* His VASSALS.

No 3.

A DECLARATOR being pursued at the Viscount of Stormont's instance, against one of his vassals, for the vassal's liferent of certain lands, holding of him; the LORDS found, that that summons should not abide continuation, neither was it necessary that the pursuer should prove, that the defender held the lands of the pursuer; but that it was sufficient to sustain the action, that the pursuer produced his own sasine, bearing him to be infeft in the lands specially, where-

Horning found null, where the warrant of charge wanted a consent requisite to give it authority.

- No 3. of he craved declarator. Which the LORDS found enough against the defender, who, if he were not the pursuer's vassal, he might disclaim him to be his superior, and thereby might free himself of this declarator. In this same process, the LORDS found letters of horning null, whereby a person was charged to pay a particular stent, imposed by the minister and elders, and session of the kirk, upon the parishioners, for entertaining of a reader, and for not payment whereof, the person foresaid being one of the parishioners stented, was denounced, because the act of the stenting, which was the warrant of the charge and denunciation, was not subscribed by the parishioners, and by this person charged particularly, without whose consent and subscription, the minister, elders, and session had no power to impose any such burden, upon any of the parishioners, to burden either themselves, or their lands, and therefore found the horning null, *ope exceptionis*.

Act. Hope.

Act. Gilphant

Clerk, Hay.

Durie, p. 165.

- No 4. 1626. June 29. FOWLIS against The LAIRD OF CALDERWOOD.

HORNING being objected, and the rebel by consent of the principal party suffered notwithstanding to stand in judgment; if a third party admitted for his interest compear, and object horning in the same process, he will not be heard. Mr Robert Fowlis debarred the Laird of Calderwood to give his oath, the principal party not being against it. See PERSONA STANDI.

Spottiswood, p. 146.

- No 5. 1628. June 13. RULE against AYTON.

JAMES RULE having convened the Laird of Ayton for making count and reckoning with him of certain sums of money, which he had debursed in his affairs; the Laird's procurator compearing at the bar, and offering count and reckoning, the pursuer debarred him with a horning. The matter was much agitated, whether he could in an action of count and reckoning debar the defender, seeing the defender was content to give him all he craved, viz. the desire of his summons. Yet by manifest votes it was found, he being a rebel might be debarred.

Spottiswood, p. 149.

* * * See Durie's report of this case, *voce* PERSONA STANDI.