

1626. *June 16.* PRIOR OF ST BATHANS *against* CARMICHAEL.

No 15.

In a shire, where there is a certain place appointed by act of Parliament for denunciations upon hornings, a party not having denounced there, but at another place where denunciations were frequently made since that act, the horning was sustained notwithstanding of the act, in respect of the posterior custom.

A DECLARATOR of escheat being sought at the instance of the Prior of St Bathans against Carmichael; the horning was quarrelled by the defender, because the party was not denounced rebel at the cross of Greenlaw, which was appointed to be the place whereat all hornings should be executed against persons, indwellers within the sheriffdom of Berwick, conform to the act of Parliament 1600, whereby the same is statute; and which act declares all hornings otherwise executed at any other place or market cross to be null; and this horning controverted, was executed at Dunse, and not at Greenlaw, conform to that act, and therefore was alleged to be null. This allegiance was repelled; and the horning, executed at Dunse, and not at Greenlaw, was sustained, notwithstanding of the said act of Parliament, in respect of the frequent use observed since the said act, in executing of hornings and denouncing rebels, since that act of Parliament, at the cross of Dunse; which contrary consuetude against the said act, the LORDS found relevant, and admitted the same to the pursuer's probation, to sustain the said horning, and found the same should be proven by hornings executed since the act; likeas there was a practise produced before the Lords, betwixt Mellerstanes and Hume of Eccles, in *anno* 1606, where the like was so decided before.

Act. *Belshes.*

Alt. *Boid.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 202. Durie, p. 202.*

No 16.

An inhibition not found null for being executed within the shire of Berwick at Dunse, and not at Greenlaw, notwithstanding of the act of parliament, appointing Greenlaw to be the head burgh of the shire, and that because of the consuetude, and that the said act was only a private act never printed nor known in this country.

1632. *March 7.*

DICKSON *against* SCOT.

IN a reduction upon a reason of inhibition, the defender *alleging* the inhibition to be null, because being execute within the sheriffdom of Berwick, it was not execute at the market-cross of Greenlaw, but only at Dunse; albeit, by act of Parliament, it is appointed, that all such executions and hornings should be execute at Greenlaw, which is declared the head burgh of the sheriffdom by that act, and all executions otherwise made, are declared null. This allegiance was repelled, and the inhibition sustained, in respect of the consuetude, and use to execute at Dunse, notwithstanding of that act, and that the act is not in observance, and that it is but a particular private act, not printed, and so not public and known to the lieges, but contained in a ratification of an infestment of some lands, granted to the Earl of Dumbar, wherein Greenlaw is erected the head burgh, with the declaration foresaid, and which is ratified in Parliament, and so is but a private act, not kepted, nor known in the country, nor printed, or published; and this was done without any probation.

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 202. Durie, p. 627.*