

have a competent time to defend themselves ; whereas they may be ignorant of the cause, and may be absent from their houses ; but that reason will not militate where parties have entered in contracts, and performed deeds, and consented that letters should pass upon six days ; so that it is their own fault that it go out. And for the practise alleged, it could not be obtruded, the full case and reasons not being set down ; whereas in 1664, by a late practise betwixt the Laird of Philorth and my Lord Forbes, (*voce* INDUCIÆ LEGALES,) the Lords did expressly find, that a charge upon a bond consenting the letters to be directed upon six days, was found orderly directed and lawful.—THE LORDS having seriously considered this case, and the acts of Parliament made thereupon, did sustain the horning, and assoilzie from the reduction, being moved upon these reasons, That the parties contractors were near neighbours, and did live together in one shire, and the conditions to be performed by them might have been done where they lived ; and so neither being unlawful nor impossible, could not fall under the acts of Parliament ; but having consented that letters should be directed within six days, and that a decret should be interposed, they ought in time to have provided for fulfilling ; and for the practise in anno 1625, they found the reason that then moved the Lords was, that the bond was granted for a sum of money in Fife, by a person dwelling in Orkney, which was impossible to be done within six days ; whereas in this case the Laird of Tolquhoun was only bound to deliver a security of lands from parties dwelling in Aberdeenshire, who were his near relations, within a certain time, and in case he should fail, consented that letters should be directed within six days.

Gosford, MS. No 738. p. 451.

No 15.

1675. February 12.

PRESBYTERY of DUNSE.

THE Presbytery of Dunse having by bill desired that letters of horning may be directed against certain persons who had been cited as witnesses, and did not appear before them,

THE LORDS did demur, in respect letters of horning ought not to be directed, but either by consent of parties, or by warrant of acts of Parliament, as appears by act of Parliament, ordaining horning to be directed upon Sheriff's and Commissary's decreets, and decreets within burgh, and Admiral's decreets.

Fol. Dic. v. 1. p. 384. Dirleton, No 253. p. 122.

No 16.

A horning
found not to
debar defen-

1676. July 12.

PURVES against SCHAW.

SIR WILLIAM PURVES, as donatar to the escheat of Schaw of Gospitry, pursues declarator. The defender offered to propone defences upon the nullity of the