

No 17. thereby might be prevented; and, upon that account, it being recommended to the Council, by act of Parliament, that they should see the laws against conventicles put effectually in execution; the Council, as they might convene the contraveners before themselves, may commissionate the inferior courts to proceed as their delegates; and upon their decreets given by them as delegates, that they may direct letters of horning.

Reporter, *Treasurer-depute.*

*Dirleton, No 406. p. 200.*

No 18. 1683. *March.* ARCHIBALD KER *against* Bailie RIDDEL.

IN the reduction of a horning upon this reason, That although the letters had been suspended as to a part of the charge, and found orderly proceeded for the remainder, yet the charger, after extracting of the decret of suspension, denounced the suspender without giving him a new restricted charge,

*Answered*; There was no necessity of a new charge for the decerniture, the letters, and charge to be put to farther execution, which imports, that any preceding execution must stand.

THE LORDS repelled the reason of reduction, and assoilzied the defender from it.

*Harcarse, (HORNING.) No 513. p. 143.*

No 19. 1687. *July.* MADDER of Langton *against* Lord TARRAS.

FOUND that horning against a tacksman did not hinder the sub-tacksman to repeat defences, though the sub-tack was set after the denunciation.

*Harcarse, (HORNING.) No 517. p. 144.*

1707. *February 28.* GORDON of Daach *against* DUFF of Dipple.

No 20.

A horning, not executed at the head-burgh of the shire where the party dwelt, on which no diligence was done to affect the debtor's

GORDON of Daach insists in a reduction of a disposition of certain lands granted by his debtor to Duff of Dipple, in prejudice of his more timely diligence against the said debtor by horning and denunciation, whereby he had the benefit of the last clause of the act of Parl. 1621, cap. 18. which provides, 'That if dyvours, or their interposed trustees, shall make any voluntary payment or right to any person, in defraud of the lawful and more timely diligence of another creditor, having served inhibition, or used horning, or other lawful mean, duly to affect the dyvour's lands or goods, or price thereof, to his be-

‘hoof; in that case, the creditor having used the first lawful diligence shall be preferred.’

The defender *alleged*; That he was a fair purchaser for an adequate price, which he had truly paid, and applied for purging of real diligences, or to true onerous creditors without fraud; and was not bound to notice the pursuer’s diligence of horning and denunciation, because the said denunciation was only used at the market-cross of Edinburgh, where the party did not reside, and so could have no effect as to escheat, single or liferent; and consequently the same was not a lawful diligence duly to affect his debtor’s lands purchased by the defenders; neither had the pursuer prosecuted his diligence by adjudging, or otherwise affecting the debtor’s estate; and, though the Lords do often favour the diligence of creditors, so as to annul all voluntary deeds to their prejudice after the first step of diligence by horning, yet that is when they are careful to proceed to consummate their diligence without delay; but inchoate diligence not prosecuted, is not comprehended in the words, nor meaning, nor design of the act.

“THE LORDS found the pursuer’s horning not being executed at the head-burgh of the shire where the party dwelt, nor any other diligence done for affecting his debtor’s lands disposed, that he had not the benefit of the act of Parl. 1621.”

*Dalrymple, No 75. p. 95.*

1708. November 27.

JOHN FORBES in Tombeg *against* GEORGE FORBES of Shiels.

JOHN FORBES in Tombeg, having charged George of Shiels with horning, for payment of the sums in a bond, principal, penalty, and annualrents resting unpaid due by George to him, the LORDS assoilzied the debtor from the penalty, in respect, some annualrents had been paid, and the charge should have been restricted to so much annualrent as was truly resting; albeit the debtor could not say, that when charged he offered to pay the annualrents truly resting, and that the charger refused to accept thereof.

*Forbes, p. 284.*

1742. December 9.

MURDOCH KING *against* JOHN HUNTER.

MURDOCH KING having obtained a decret of adjudication upon a decret *cog. causa*, before the Sheriff of Stirling, containing a precept against the superior for infesting him, he applied, in common form, to the Ordinary on the bills, to direct letters of horning against the superior.

No 20.

lands, found not to give the creditor the benefit of act of Parl. 1621, cap. 18.

No 21.

A charge of horning was given on a bond for payment of principal, penalty, and annualrents resting unpaid in general, without restricting to so much annualrent as was truly resting. This sustained as a sufficient ground to assoilzie the debtor from the penalty.

No 22.

Horning against a superior cannot pass on a decret of adjudication ob-