

the execution bore only, that the messenger left a copy at the market-cross of the head burgh of the jurisdiction where the lands lie, that none might pretend ignorance; and mentioned not that a copy was both affixed and left.

Fol. Dic. v. 1. p. 265. Forbes, MS. p. 17.

No 110.

1726. *January 11.* M'DONALD of Bornaskittag *against* M'LEOD of Hammer.

No 111.

A DEFENDER insisting in a no-process, because the copy signed and delivered to him by the messenger was disconform to the summons, it was *answered*, that the execution must bear faith, mentioning the delivery of a just copy, until it be improved; nor is the truth of the execution redargued by the lame copy produced, which may have been made up *ex post facto* in concert with the messenger, in order to cast the process.—THE LORDS repelled the objection. *See APPENDIX.*

Fol. Dic. v. 1. p. 266.

S E C T. V.

Three blasts of the Horn.

1611. *January 19.* SIR R. HEPBURN *against* L. of NIDRIE.

No 112.

A HORNING bearing that the rebel was denounced by open proclamation, and put to the horn, the horning was sustained, albeit it neither bore that he lawfully denounced him rebel, nor of any blasts of the horn.

Fol. Dic. v. 1. p. 266. Haddington, MS. No 2102.

1624. *March 4.* DRYSDALE *against* L. SORNBEG.

No 113.

IN an action betwixt Drysdale *contra* L. Sornbeg and L. Langtoun, a horning being produced by Sornbeg, and quarrelled by Drysdale, alleging the same to be null, because, in the denunciation, the messenger, executor thereof, had not indorsed, and the execution did not bear, that the messenger had used and given three blasts of the horn at the denouncing of the party; which deed, as it was a solemnity necessary to the denunciation, so was necessary in formality,

A denuncia-
tion was sus-
tained altho'
it made no
mention of
the three
blasts of the
horn, but on-
ly that the
messenger
lawfully de-
nounced.

No 113. that the execution should proport the same to have been used ; and the execution not bearing the same, the same could not be sustained, but the horning for want thereof ought to be found null.—THE LORDS repelled this allegiance ; but found, that the user of the horning ought to prove, that the messenger truly gave three blasts at the time of his denouncing the rebel, which being proven, albeit the execution proported not the same, seeing it proported and bore that he orderly and lawfully denounced the rebel ; the LORDS sustained the horning, because these words, *lawfully and orderly*, included all these solemnities, the same being proven to have been truly given, as said is.

Act. ———.

Act. *Miller, Foulis, et Belsbes.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 266. Durie, p. 116.

* * Spottiswood reports the same case :

IN an action to make arrested goods furthcoming, pursued by Thomas Drysdale, assignee constitute by Sir James Durham, against the Laird of Langtoun, it was *excepted*, that it was an assignation made by a rebel *stante rebellione*. *Replied*, That the horning was null, the officer not having made mention in the executions that he had used three touts, which is a formality not to be omitted. This was very much agitate, and at last found, that that want was supplied, in so far as the officer had said that he lawfully denounced him, he always taking on him to prove that he had not omitted to give the three touts.

Spottiswood, (HORNING) p. 146.

1626. *March 22.*

SOMERVEL, Donatar to the L. Edmiston's Escheat, *against* ———.

No 114.
Found as
above.

IN a declarator pursued of the L. of Edmiston's escheat, at the instance of Lewis Somervel, servitor to the Lo. Erskine, it being *alleged*, that the horning was null, because the denunciation bore not, that three blasts of the horn were used ; and the pursuer *replied*, that the execution bore, that he duly and lawfully denounced ; the words, duly and lawfully, must be understood to comprehend all solemnities requisite, specially where there is no law requiring, that the execution should bear that clause, or that it is necessary to be done.—THE LORDS repelled the allegiance, and sustained the horning, but found it necessary, that the pursuer should prove that three blasts were given by the officer at his denouncing of the defender, which being proven to have been truly and actually done, albeit it was not so exprest in the written execution, the LORDS found it sufficient, and that the want of these words was no ground of nullity ; and this was ordained to be proven, because the witnesses, and the messenger, executor of the denunciation, were on life presently ; but if the witnesses were dead, in