

1626. *November 29.* L. SMETON *against* RELICT OF SPIERS.

No 30.
A horning
found null by
exception.

IN a special declarator, at the instance of L. Smeton, donatar to the liferent of — Lidderdale of St Mary's Isle, against the relict of William Spiers, who was convened as intromissatrix with a debt of the rebel's; — THE LORDS found an exception of nullity proponed against the horning, whereupon the general declarator was decerned, to be relevant, bearing, ' That the charge of that horning, was a charge to find caution of lawborrows; ' likeas before the denunciation, and within the days of the charge, caution was found; and he produced the act of caution, which was dated before the denunciation, the date of which denunciation was contained in the decret of general declarator; in respect whereof, the same being instantly verified, the horning was found null, notwithstanding of the sentence of general declarator; for this was proponed for a creditor, who was not called in the general declarator.

Act. *Lawtie.*

Alt. *Foullis.*

Clerk, *Gibson.*

Fol. Dic. v. I. p. 172. Durie, p. 239.

1629. *January 11.* EARL OF GALLOWAY *against* GORDON.

No 31.
Decided as
No 28. *supra.*

IN a declarator, pursued by the Earl of Galloway against Gordon, the defender offered to prove that he dwelt *alibi* the time of the charge, than where the executions did bear him to have then dwelt. — But the LORDS would not receive the allegiance by way of exception, but reserved his action thereanent for reduction of the horning thereupon.

Fol. Dic. v. I. p. 171. Spottiswood, (HORNING.) p. 153.

1630. *November 30.* DOUGLAS *against* WARDLAW.

No 32.
In a declarator of escheat, it was found not enough to except that before denunciation the debt was paid and discharged, but the horning behoved to abide a reduction, to which the Officers of State must be called, because the

JAMES DOUGLAS, macer, being donatar to the escheat of Mr John Wardlaw, and pursuing declarator thereon, the defender *alleged*, That the horning was null, because, before the denunciation, the party had made payment of the sums charged for, so that thereafter he could not be lawfully denounced; and the party having paid, he needed not have suspended, having in due time obeyed the charges. This exception was not received *hoc loco*, to stay the declarator, being proponed by way of exception, to take away a horning standing, summarily, which could not be taken away but by an ordinary action, whereto the King's Advocate and the party charger behoved to be called, and wherein trial must be taken upon the true date of the acquittance of payment, which is not proper in this process; therefore action of reduction was reserved to the party upon that reason.

Clerk, *Gibson.*

Fol. Dic. v. I. p. 171. Durie, p. 544.