

1664. December 16. LAIRD OF PHILORTH: *against* FORBES of Aslocon.

No 13.

Horning sustained on a charge of six days beyond Dee, in respect it proceeded on a clause of registration.

PHILORTH, as donatar to the escheat of Forbes of Aslocon, and having obtained general declarator, insists in his special declarator. It was *alleged* absolutor, because the horning whereupon the gift was granted is null, in so far as, being beyond Dee, it is upon six days, contrary to the act 25th Parliament 1600, declaring all hornings beyond Dee, on less than 15 days, null, conform to a decision in Durie, albeit on a bond bearing a clause of registration on six days only, February 14. 1625 Stuart *contra* Bruce, No 10 p. 6855. It was *answered* for the pursuer, That the acts of Parliament hinder not the agreement of parties, but are expressly anent hornings on lawburrows or the like; but these are on the parties' own consent by the clause of registration, and if these should not be valid, all the hornings and other executorials thereon beyond Dee since 1600 would be null, and such bonds would have no effect; seeing, upon the clause of registration, horning could not be otherwise directed on six days, and so they should not have any summary execution. The defender *answered*, That the act is general of all hornings, and bears a general reason, because it is impossible for parties at such distance, to come to Edinburgh to suspend in four days, and private pactions cannot derogate from general laws, where the express reason is for public utility, contrary to which, no man can make himself rebel, more than he can give power to incarcerate himself where law gives no warrant, but prohibits.

THE LORDS repelled the defence, and sustained the horning.

Fol. Dic. v. I. p. 466. Stair, v. I. p. 241.

1667. November 26. HAY *against* DRUMMOND.

No 14.

The Lords resolved, and caused intimate to the advocates, that hereafter they would only give two terms in reductions, and three terms in improbations.

IN a reduction Hay of Hayston *contra* Drummond and Hepburn, a sasine being called for, the defenders having *alleged* that the same being registrate, and they condescending upon the registration, the pursuer should extract it himself,

THE LORDS did debate amongst themselves, whether the defender should be obliged to extract and produce the sasine. Some were of the opinion that there is a difference betwixt decreets and registrate bonds, and such like, and betwixt sasines and charters, which being the defender's own evidents, and the principals not being in the registers, they are presumed to have them; and if they have them not, ought to extract them. Others thought, that seeing extracts do satisfy the production in reductions, if the defenders have neither principals nor extracts, and be content to make faith thereupon, it were hard they should be at the charge to extract them, in order to a process against themselves. THE LORDS did nothing upon the debate.

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No 14.

Fol. Dic. v. 1. p. 466. Dirleton, No 111. p. 47.

*** Stair reports this case :

MR JOHN HAY having pursued a reduction of the rights of some lands against Mr John Drummond, and called for the rights made to him by umquhile Patrick Hepburn, Mr John Drummond got three terms to produce, reserving his defences, and at the last term *alleged* no certification against the rights granted by Patrick Hepburn, because none to represent Patrick Hepburn were called. A diligence was granted *incidenter* to the pursuer to call the representatives of Patrick Hepburn, whereupon he cited Patrick Hepburn his eldest son, and apparent heir, who having gotten one very short term, and that circumduced against him, it was now *alleged*, That all the terms ought to be granted to Patrick Hepburn, seeing he was a party necessary to be called, and his rights were to be reduced.—The pursuer *answered*, That this being a single reduction *de jure*, there was no more due but one term. *2dly*, Albeit more were due, yet Mr John Drummond having run three terms already, he can crave no more but one, upon the account of Patrick Hepburn his author.

THE LORDS, in respect the term assigned to Patrick Hepburn was but on six days, allowed him a second term; and ordained it to be intimated by the Ordinary to the advocates, that in single reductions of rights of lands, they would grant two terms for production, and in reductions and improbations three only.

Stair, v. 1. p. 489.

1672. June 14.

WALLACE *against* PURVES.

No 15.

THE LORDS found, That a declarator of right, which ought to be upon 21 days, being privileged by a bill, which is *periculo petentis*, should not be sustained, being executed upon a shorter term; and ordained that the writers to the signet should not insert in bills and summonses, a privilege dispensing with the law, and the *solemes induciæ* thereby introduced in favour of defenders; under the pain of 100 merks for the first fault, and deprivation for the second; except in cases which by the law are privileged and named: The President, Advocate, and others of their number, to meet and consider what these should be.

Fol. Dic. v. 1. p. 465. Dirleton, No 167. p. 68.