

had rather have one month more in winter than the two months of summer session. *2do*, This orderly way of discussing causes by the book of enrolment, will demonstrate, say they, the unnecessariness of the summer session, since the fourth month of winter, at least fifth, will discuss all the causes in Scotland, and [drive] us in a short time to rising at eleven o'clock for want of ado; especially that part of the regulations being observed, That no causes within 200 merks be pursued in the first instance before the Lords.) *5to*, If a man suspended a charge of horning in January or any of the months ensuing, he might by this new model sing a requiem to himself till that time twelve months, for sooner *per rerum naturam* it could not be heard; but as it stands now such suspensions may be got discussed in the summer session. Siclike if I warn a tenant to remove at Whitsunday, I could not, by the said overture, get the legality of my warning declared, nor a decret of removing sooner than November or December, whereas now I may have my decret in my hand ere the last of July. Neither solves it the inconvenience to say, I may pursue these things before the inferior Judges, who sit at all times; for *1mo*, There be many actions to which they are not competent; *2do*, In the rest, the defender will either procure them advocated or suspend them. Now how great prejudice the lieges may sustain in the delay of their actions which merit summary process is very conceivable. I shall only give one instance. Conform to the late act of Parliament, I charge my debtor to the effect I may thereafter comprise and come in within year and day of some anterior comprisers; the debtor gets my letters suspended simply, which will comprehend a suspension of apprising as well as of personal execution; ere I get the suspension discussed, year and day expires, and so I lose my diligence and the benefit of the act of Parliament anent comprising within year and day, and will have right allenarly to the reversion. I think the debtor's dole *et mora* in suspending, ought not to postpone his diligence. *6to*, *Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est; l. 35. D. de Reg. Juris.* *Igitur*, the diets of the Session being established by a continued series of acts of Parliament, renewed from time to time; the same cannot be altered by our Lords' regulators nor by the King, except in face of Parliament assenting thereto. *7to*, Though it appears by act of sederunt on the 20th of January 1586, and other places, that the diets of the Session have been otherwise constituted than they are now, yet they cannot say but there was ever a summer Session. And the regulators would remember that they have wronged the town of Edinburgh enough already by their regulations, though they do not this additional wrong too; and by nothing so much as that of the enrolment, though a secret stroke.

*Advocates' MS. No. 231, folio 106.*

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#### ANENT LOOSING ARRESTMENTS.

AN arrestment laid on by virtue of a decret or a registrate bond, (the registration being a decret of consent,) cannot be loosed by offering to find caution; and it is only arrestments laid on upon dependences, or where there is no decret, that

can be loosed. Hence the deliverance of all bills for loosing arrestments bears, If the same be not laid on by virtue of a decret.

*Advocates' MS. No. 232, folio 107.*

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ON a Baron's decret or rollment of Court, the Lords will not grant by letters of horning summary execution, because of the meanness of their jurisdiction; and that the acts of Parliament, viz. act 10 *anno* 1606, and act 15, 1609, &c. appointing letters of horning to pass on sheriffs, stewarts, bailies, (as well of royalty as regality,) admirals, and commissaries, (though they are only foisted in by a wrong narrative in the said act 1609,) their acts and decreets, make no mention of baron courts; and therefore when horning has been craved on the decreets of the bailies of Leith, it has been refused because it is only a burgh of barony; (yet horning passes on the decreets of the first bailie there, because he has a sort of admiral power;) and the sole execution can pass upon such, is the baron or his bailie their precept to their officer for poinding the defender (if so be he was subject to their jurisdiction,) his goods or geir lying within the barony: the apprising whereof, in my judgment, should not be at the market cross of the head borough of the sherifdom or regality wherein the barony lies, seeing that is *extra territorium*; but at the place where the baron court is kept, which undoubtedly will suffice. And if the baron or other person who has recovered decret before the baron bailie would have letters of horning on his said decret, he must suit letters conform, either before the sheriff or Lords of Session, or crave the defender to pay such a sum contained in the rollment of court, and produce his said decret *in modum probationis*, and then on the decret conform given by the sheriff or Lords, he will get *paratam executionem* by horning. And truly it is just it should be so, because of the universal ignorance of the baron bailies; and seldom there are any thing proponed for the defenders, but allenary, The bailie having considered the complaint of sic a man against sic a man, found——. Yet if a man be decerned in such a court for contumacy in refusing to give his oath, the matter being referred thereto, and he being present in Court, I think the Lords should not repone him again to his oath.\*

*Advocates' MS. No. 233, folio 107.*

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#### ANENT LETTING OF DEBTORS' LANDS.

WHERE a creditor (whether he be compriser or infetter,) is in possession of the debtor's lands, and finds the same so racked that if the tenants get not an ease in

\* *Infra*, May, 1676, No. 474 [Hamilton, Historical Volume;] and 496, § 2, [Balfour against Pidgeon, 10th October, 1676, Historical Volume.]