

No 38.

was competent, yet was not found so necessary as if the foresaid charges could not be direct; for, if the contract betwixt the parties which bears thirlage were registrate, charges of horning would pass thereon, so here in the declarator upon the contract, charges may be suspended by obedience and caution to obey.

Act. *Nicolson et M^cGill.*Alt. *Stuart et Lermonth.*Clerk, *Scot.**Fol. Dic. v. 1. p. 538. Durie, p. 736.*

No 39.

Executions of a summons, whereby several parties were cited to several terms by the first citation, were not sustained till one term was inserted for all.

1680. *January 15.* GORDON *against* The Laird of LEE and Others.

GORDON of Nethermoor having adjudged the lands of Tarbrax from Dame Anna Lockhart, did thereupon pursue a reduction of a tailzie granted by William Lockhart of Tarbrax her brother, providing his estate 'to him and the heirs of his own body; which failing, to Lee and his heirs,' as being done *in lecto*. The defender *alleged* no process, because parties necessary to be called, were cited at several diets by the first citation, which if it should be mended, and a day inserted for them all, there will not remain free days for the second citation, conform to the act of Parliament, which the execution produced can admit, and fixed form will not admit different days of compearance in the same cause, when there is one conclusion against all that are cited. It was *answered*, That there was no law requiring one day of compearance for all parties in the summons, and though it hath been so ordinarily, yet it cannot be shown, that ever a summons was casten for the contrary.

THE LORDS refused to sustain the different days of compearance, but allowed the day of compearance for all to be inserted, so as it would answer for all the executions, and that the same might be continued and a diligence granted for a second diet to all the defenders.

*Stair, v. 2. p. 739.*1710. *July 27.*JOHN VERE-KENNEDY, Supplicant, *against* JOHN STUART, Writer to the Signet.

No 40.

The raising horning on an act of the general convention of the Royal Burghs, appointing one to pay a sum to another, found warrantable.

UPON a complaint at the instance of John Vere-Kennedy, against John Stuart, for raising letters of horning against the complainer, upon an act of the General Convention of the Royal Burghs, appointing him to pay L. 500 to Mr Alexander Clark and John Fraser, as a part of the damage they sustained through their being unjustly incarcerated and detained prisoners at Campvere, to which the complainer was accessory; the LORDS found the raising of the horning warrantable; in respect it was *answered* for Mr Stuart, That the act 6th Parliament 19. James VI. allows to raise horning upon acts of the Burghs;