

1624. *March 6.*STUART *against* ———.

No 128.

A horning was found null, because no vestige of a stamp appeared, altho' the execution bore that the messenger had affixed his stamp.

IN an action of reduction of a horning, pursued at the instance of Mr James Stuart, commissary of Dunkeld, upon this reason, because it was not stamped; the reason was found relevant, and the horning found null, for the execution was not stamped, nor any vestige or appearance, that ever any stamp had been affixed thereto, albeit that the same bore these words of the officer, giver of the charge, viz. that 'for mair verification, his stamp and signet was affixed;' which words were not respected, seeing there was no appearance that the same had ever been stamped, for the horning was but lately executed, and the charge given in September 1623, so that the stamp might have appeared by some mark *in facto recenti*; but there was no dispute in this process for the defender, but only the horning produced by the defender, and the reason referred to the Lords.

Act. *M^cGill*.Alt. *Nairn*.Clerk, *Hay*.*Fol. Dic. v. 1. p. 267. Durie, p. 118.*1681. *February 4.*JAN VAN LOVAN and his FACTOR, *against* BRUCE of Newton.

No 129.

An inhibition was found null *quoad* a third party acquiring *bona fide* after the inhibition, because the executions were not stamped.

ALLEGED against an inhibition served on a dependence and a decret following thereon. *Answered*, No respect thereto, because the process which was the ground of the inhibition, was innovate by desisting from that process, and commencing a new one before the Bailies, whereon the decret followed. THE LORDS, before answer, ordained the precept and executions to be produced; which being done, they found the executions, not being stamped conform to the 32d act, Parliament 5. James III., and 74th act, Parliament 6. James V., nor subscribed conform to the 141st act, Parliament 12., James VI., they were null with the inhibition, and all following thereon, *quoad* a third party acquiring *bona fide* after the inhibition, and declared this should be a leading case, which they would follow in all time coming.

Fol. Dic. v. 1. p. 267. Fountainball, MS.

* * This case is reported by Stair, *voce* LIS ALIBI PENDENS.—The like was found, February 1687, Maxwell against Wallace, No 80. p. 3743.

1686. *February 12.*The LORD LIVINGSTON *against* LORD JOHN HAMILTON.

No 130.

THE Lord Livingston, as donatar to the escheat of the late Earl of Callander, pursues a declarator against Lord John Hamilton, son to Duke Hamilton, who

had right by disposition from the last Earl. *Alleged*, The horning is null, because the execution is not stamped, nor any vestige that ever there was any. For within this week, in the case of the Duke of Gordon, the LORDS sustained an execution, because there was the print and vestige of a stamp. *Answered*, They will do it, and abide at it. The Lord Kemnay reduced the horning, and found it null; and having reported it, the LORDS did the same. Now, by the 4th act of Parliament 1686, stamping is declared unnecessary.

No 130.

Fol. Dic. v. 1. p. 267. Fountainball, v. 1. p. 402.

1686. *March.* LORD CALLENDAR *against* LORD JOHN HAMILTON.

No 131.

IN a general declarator of escheat, it being *objected*, That the executions of the horning were null, because though a late horning, it did not appear to be stamped, conform to act 32. Parl. 5. James III., act 74. Parl. 6. James V., and many decisions, as March 6. 1624, No 128. p. 3778. &c.

Answered; That stamping, since the act of Parliament requiring the subscription of notaries, is not essential; and the execution itself bears to be stamped; and, *de consuetudine*, the very tearing and laying down of the paper is sufficient, without either wax or seal, which demonstrates, that stamping is but an insignificant solemnity; nor doth the late act, requiring witnesses' subscriptions to executions, mention it.

THE LORDS, in respect of the above mentioned acts of Parliament, and constant custom, found the [execution of] horning [null] for not being stamped.

Harcarse, (HORNING.) No 516. p. 144.

1688. *February 10.*

MR JOHN BUCHANAN *against* The NEAREST of KIN of one KER in Kelso.

No 132.

It being *objected* as a nullity in a horning, that though the executions bear to be stamped, yet no vestige of the stamp appears; and the executions are but a recent deed in *anno* 1682.

Answered; In fortification of the execution asserting itself to be stamped, it is offered to be proven, that at the outgiving of the process, a vestige of the stamp did appear, which is now lacerate.

THE LORDS found the answer relevant.

Fol. Dic. v. 1. p. 267. Harcarse, (HORNING.) No 519. p. 145.