

and, it doth not alter the case, that the act appoints the complainer to pay, and doth not decern him to pay; for most of the acts of the Burghs run in that strain, and an appointment to pay is the same with a decerniture.

Forbés, p. 436.

No 40.

1742. December 2. MURDOCH KING, Supplicant.

MURDOCH KING, upon a decree *cognitionis causa*, having obtained an adjudication before the Sheriff of Stirling, containing a precept against the superior to infest him in the lands adjudged, did apply in common form to the Lord Ordinary on the bills, to direct letters of horning against the superior. The Lord Ordinary, after advising with the Court, having recommended to the keeper and writers to the signet, to search into the practice, their report was, ' That they know of few instances of adjudications before inferior courts, and ' that they never observed a horning pass thereupon where there was no abbreviate, though some of the society have seen such adjudications without abbreviates, but had no opportunity to know whether horning followed or not; ' that the society is of opinion they are sufficiently warranted to present bills ' and expedite letters of horning upon such adjudications, though there be no ' abbreviate, provided such decrees contain precepts directing horning against ' superiors.'

No 41.
An adjudication pronounced by the Sheriff, not a foundation for a horning against the superior.

What occurred to the Lords for refusing to direct letters of horning was, that a decree *cognitionis causa*, according to its present form, contains no decerniture against the superior, who is not so much as called for his interest; that therefore, though in obedience to the act 10th Parl. 1606, horning must be granted upon every decree pronounced by a Sheriff, it will not follow, that horning must be summarily issued against a person not called in the process; and that the proper course, in this case, is, to pursue the superior *via ordinaria*; and, when decree is obtained against him, horning will follow of course.

It was also *urged*, That, if the Court should think itself empowered to issue out summary diligence against the superior, instead of an ordinary process, it would not be for the public interest to exert a *nobile officium* in this case; that there is no law for recording adjudications *cognitionis causa* pronounced by the Sheriff, which makes them an inconvenient diligence; and that, therefore, it would be reasonable to come to a resolution, and to publish an act upon it, always to refuse horning upon such an adjudication, unless it be recorded.

" THE LORDS accordingly refused the bill."

Rem. Dec. v. 2. No 34. p. 53.

* * See C. Home's and Kilkerran's reports of this case, No 22. p. 5743.

voce HORNING.