

No 24.
any objection
to the debt,
tho' ever so
relevant and
verified.

entitled to draw L. 4346 Scots; and he having presented a bill of horning, in order to charge for payment, Heron appeared before the Ordinary on the bills, and alleged that Halhill's adjudication was founded upon two debts, to one whereof he had only an assignation under back-bond, obliging him to communicate to his cedent the adjudication to be led by him, so far as concerned the debt assigned; which back-bond Heron produced for instructing his allegiance, together with a conveyance thereof in his favour, and pleaded that horning should only be allowed to go out against him for so much of the sum as corresponded to Halhill's own debt, and that the bill should be passed only for the proportion of the sum corresponding thereto.

To which it being *answered*; That it was a novelty in form to make such objection to a bill of horning; that the creditor was entitled to have out his diligence for the whole sum decerned by the decree of division, and that the proper method for Heron to obtain a judgment upon his objection, was to apply by bill of suspension; the ORDINARY "found the objection not competent, reserving to Heron to suspend as accords;" and the LORDS "adhered."

Fol. Dic. v. 3. p. 275. Kilkerran, (HORNING.) No 1. p. 255.

No 25.

1750. July.

A. against B.

A WRITER cannot give horning on a bill wanting the subscription of the drawer; for although such bill, if holograph of the drawer, might be valid without his subscription, yet a proof is required of its being holograph, and the warrant of a horning must be a writ *ex facie* valid.

Fol. Dic. v. 3. p. 275. Kilkerran.

* * * See this case, No 43. p. 1442.

No 26.

Horning is
not compe-
tent on the
decree of a
Baron Bailie.

1753. June 16.

ROBERT CORMACK against GEORGE ROGER.

ROBERT CORMACK obtained decret before the Bailie of Leith against George Roger, for payment of a certain sum of money; and gave in to the Lords a bill for horning upon this decret.

The Lord Ordinary reported the bill to the Lords. The reason of doubting whether the bill could pass was, That the Bailie of Leith is not the Bailie of a royal burgh, Leith being only a burgh of barony; and though part of Leith lies within the royalty of Edinburgh, yet the Bailie of Leith is not even in that light a Bailie of a royal burgh, but only the delegate of the Magistrates of Edinburgh; neither is it now known with certainty what part of Leith is within the royalty.

It was *observed*, That hornings had frequently been granted on such decreets, but they had passed of course, and not *causa cognita*.

No 26.

“THE LORDS refused the bill.”

Reporter, *Drummore*.

Fol. Dic. v. 3. p. 275. Fac. Col. No 76. p. 115.

1756. *March 9.*

ARCHIBALD STEVENSON of Montgreenan, *against* WILLIAM BARCLAY Tenant in Woodgreen.

ARCHIBALD STEVENSON pursued William Barclay before the Justices of Peace, for having suffered five of his cattle to break into the pursuer's inclosure, and destroy some young trees. The Justices decerned against the defender for L. 25 Scots to be paid to the pursuer, and for the like sum to be paid to the clerk of court, in terms of the 39th act of Parliament 1685.

No 27.
A horning is not competent upon a decree pronounced by Justices of Peace.

Archibald Stevenson applied for a bill of horning upon the decret pronounced by the Justices. The Lord Ordinary doubted if a bill of horning was competent upon a decret pronounced by the Justices of peace; and therefore reported the case to the Lords.

“THE LORDS refused the bill.”

B.

Fol. Dic. v. 3. p. 275. Fac. Col. No 198. p. 296.

** Letters of four forms discharged, and letters of horning upon a simple charge substituted in their place by act of sederunt, 23d November 1613. See Spottiswood, (HORNING.) p. 149.

See EXECUTION.

GENERAL LETTERS.

INDUCIÆ LEGALES.

LEGAL DILIGENCE.

PERSONA STANDI.

SUMMAR APPLICATION.

APPENDIX.