

1774. August 5.

ANGUS M'DONALD, Merchant in Edinburgh, and ROBERT RANKEN, Lyon-clerk Depute, Supplicants.

THE clerk of the bills having refused to write, without authority from the Court, upon two bills for letters of horning presented by the above-named persons, they gave in a memorial upon the point, in obedience to an order of Court.

The bill presented by M'Donald was in order to obtain a horning upon a decree of the Lyon-court against a messenger in Inverness, and his cautioner; the ground whereof was explained to be the undue detention of some papers.

It was acknowledged, that few cases have occurred where the authority of this Court has been interponed, either by decrees conform, or upon bills of horning, to decrees of the Lyon-court, there being few processes raised before that Court, and the decrees thereof, generally speaking, of such a nature, or for such small sums, that the persons decerned have found it more for their interest either to give obedience to the decree, by payment of the sum in which they were decerned, or in compounding the same; though there are a few instances in which bills of horning, upon decrees of the Lyon-court, have been presented and passed; one of these as far back as the year 1759; another more recently. But, in regard to the bill now presented for M'Donald, it was *pre-mised*, That the Lord Lyon has it not in view to grasp at any greater power than he is justly entitled to, and desires only to enforce execution upon his decrees, in the same form and manner as is the case of decrees of all other inferior courts, by letters of horning issued by authority of this Court; and as it would be attended with the utmost inconveniency to the subjects, should execution be denied to his decrees without going through the tedious and expensive form of obtaining decrees conform, it was submitted, that it is competent for this Court to authorise letters of horning upon the decrees of the Lyon-court, whether the act of 1644, authorising this species of diligence upon the decrees of the Lyon shall be understood to be repealed by the general act rescissory of 1661, or to fall under the saving and excepting clause in that statute.

The other bill presented for Mr Ranken was upon a bond of cautionry granted by a messenger in Edinburgh, and recorded in the Lyon-court books. It was stated, that these bonds of cautionry are specially authorised by the statute of James VI. Parliament 11. cap. 46. to be taken from all messengers at their admission; and, *inter alia*, contain an obligation to make payment of certain annual fees to Lord Lyon and the Lyon-clerk, which were recently confirmed by two consecutive decisions of this Court; that the present application for horning is to enforce payment of certain arrears of said annual fees incurred by the above messenger; and as the said bonds of cautionry have uniformly and immemorially contained a clause of registration in the following words,

No 359.  
The Lords refused to pass a bill for horning on a decree of the Lyon-court against a messenger for the unjust detention of papers.

The registration of the bond in the Lyon-court books is no sufficient warrant for issuing a horning.

No 359. ' And we consent to the registration hereof in the books of Council and Session, or in the Lyon-court books of Scotland, that letters of horning on six days, and all other execution needful, may pass hereupon in form, as effeirs,' &c. ; wherefore it was *contended*, That an extract of one of these bonds of cautionry from the Lyon-court books must be considered as a sufficient warrant for such letters of horning.

With respect to the practice, the clerk gave information, that he never knew any instance but twice when he gave the horning, upon reading an act to him ; and, upon being told that it was a rescinded one, he had constantly refused to do it. The Lord Ordinary mentioned a note of cases laid before him by the presenters of the bills in question, viz. The Lyon against —, 26th July 1666, No 355. p. 7648. ; Stair, 13th Feb. 1668, Grierson against M'Ilroy, No 357. p. 7651. ; and 27th June 1673, Heriot *contra* Fleming No 356. p. 7650.

THE COURT were clearly of opinion, upon the *first* point, that the bill at M'Donald's instance ought not to be passed, the act 1644, by which the Lyon-court was put upon the same footing with other inferior courts, as to this matter, being a rescinded one, and as there had been no uniform practice since, such as to afford a plea of prescription in the Lyon's favours ; and, upon the *second* point, it was also agreed, that the registration of the bond in the Lyon-court books was no sufficient warrant for issuing a horning ; and, therefore,

“ Remitted to the Lord Ordinary on the bills to refuse to pass both bills.”

Act. Dean of Faculty.

Clerk, Tait.

*Fel. Dic. v. 3. p. 360. Fac. Col. No 130. p. 345.*

No 360. 1778. June 24.

The Lyon-court having fined a person for having assumed arms without matriculation, and decerned him to forfeit the furniture which bore such arms ; the Lords found that the Court was competent in such actions, but that its jurisdiction was not privative. And on the merits of the case,

PROCURATOR-FISCAL of the Lyon-court, *against* WILLIAM MURRAY of Touchadam.

MR MURRAY was cited before the Lyon-court by the Procurator-fiscal, for having assumed ensigns-armorial without matriculation, as required by the acts 1592, c. 127. and 1672, c. 21. The precept concluded upon these acts for certain penalties, and for escheat of the goods and furniture on which the arms were represented.

The Lyon-depute having decerned in terms of the libel, Mr Murray brought the cause into the Court of Session by advocacy ; in the discussing of which, two preliminary points occurred, Whether the Lyon-court was competent to this question ; and if competent, Whether it was likewise privative ?

THE COURT, November 30. 1775, “ repelled the objection to the competency of the Lyon-court, and also repelled the plea of its jurisdiction being privative.”