

he refuses to remove. "THE LORDS found this no nullity, it being only *declaratoria juris*, and for expediting removings; and that it could not be put in execution till after the term." Yet some thought, tenants were favourable in law, (as appears by many of our acts of Parliament,) and were not so strictly to be used; and that the anticipation was contrary to the analogy of law which is to be observed: Yet Stair in his Institutions, Tit. 19. approves of this decision.

No 33.

*Fountainball, v. I. p. 142.*

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S E C T. V.

Solemnities requisite in the execution of diligence.—Purification of condition debts.

1605. June 5.

DRUMLANRIG *against* MAITLAND.

IN a declarator pursued by the Laird of Drumlanrig against the Laird of Auchingassel, and his son Robert Maitland; it was *alleged* by Robert Maitland, That the horning used against him was null, because he was denounced at the market-cross of Edinburgh which was not lawful, he not dwelling within that sheriffdom but in Annandale. It was *answered*, That the horning was lawful, having an act of Secret Council commanding a macer to pass particularly to the market-cross of Edinburgh and denounce the said Robert rebel for his present contempt and disobedience done to them, he being called before them for diverse odious offences; and, after compearance, being commanded to remove and remain in the outer house while he was called, he absented himself contemptuously, and became fugitive, and therefore was denounced, as said is; in respect whereof, the LORDS sustained the horning, and found it sufficient, notwithstanding the allegiance.

No 34.

A horning executed in Edinburgh, while the party was in another district, was sustained, because an order of Privy Council had been issued to denounce them for contempt of authority.

*Haddington, MS. No 791.*

1623. December 17.

E. of GALLOWAY *against* VAUNS.

IN an action betwixt the Earl of Galloway *contra* Vauns, the LORDS sustained a charge of horning executed by virtue of letters raised before the term of payment contained in the bond whereupon the said letters were raised; seeing the letters bore, to charge the party obliged to make payment when the term of payment was bypast; and that no charge was executed upon the said letters,

No 35.