

have a competent time to defend themselves ; whereas they may be ignorant of the cause, and may be absent from their houses ; but that reason will not militate where parties have entered in contracts, and performed deeds, and consented that letters should pass upon six days ; so that it is their own fault that it go out. And for the practise alleged, it could not be obtruded, the full case and reasons not being set down ; whereas in 1664, by a late practise betwixt the Laird of Philorth and my Lord Forbes, (*voce* INDUCIÆ LEGALES,) the Lords did expressly find, that a charge upon a bond consenting the letters to be directed upon six days, was found orderly directed and lawful.—THE LORDS having seriously considered this case, and the acts of Parliament made thereupon, did sustain the horning, and assoilzie from the reduction, being moved upon these reasons, That the parties contractors were near neighbours, and did live together in one shire, and the conditions to be performed by them might have been done where they lived ; and so neither being unlawful nor impossible, could not fall under the acts of Parliament ; but having consented that letters should be directed within six days, and that a decret should be interposed, they ought in time to have provided for fulfilling ; and for the practise in anno 1625, they found the reason that then moved the Lords was, that the bond was granted for a sum of money in Fife, by a person dwelling in Orkney, which was impossible to be done within six days ; whereas in this case the Laird of Tolquhoun was only bound to deliver a security of lands from parties dwelling in Aberdeenshire, who were his near relations, within a certain time, and in case he should fail, consented that letters should be directed within six days.

Gosford, MS. No 738. p. 451.

No 15.

1675. February 12.

PRESBYTERY of DUNSE.

THE Presbytery of Dunse having by bill desired that letters of horning may be directed against certain persons who had been cited as witnesses, and did not appear before them,

THE LORDS did demur, in respect letters of horning ought not to be directed, but either by consent of parties, or by warrant of acts of Parliament, as appears by act of Parliament, ordaining horning to be directed upon Sheriff's and Commissary's decreets, and decreets within burgh, and Admiral's decreets.

Fol. Dic. v. 1. p. 384. Dirleton, No 253. p. 122.

No 16.

A horning
found not to
debar defen-

1676. July 12.

PURVES against SCHAW.

SIR WILLIAM PURVES, as donatar to the escheat of Schaw of Gospitry, pursues declarator. The defender offered to propone defences upon the nullity of the

horning. The pursuer produced a horning to debar the defender, by which he was denounced by letters of intercommuning, upon account of conventicles.—It was *answered* for the defender, That the pursuer, who seeks the defender to compear, with certification, cannot debar him, or crave any certification against him, either to be holden as confest, or any certifications in reductions or improbations, which the Lords have often sustained, and allowed only pursuers to be debarred.

THE LORDS refused to suffer the pursuer to debar the defender to compear in any thing where his personal presence was requisite, but that he might be debarred from any other defences.

Stair, v. 2. p. 446.

1676. December 19.

TENNENT, YOUNG, and Others, *against* SANDY, Procurator-Fiscal of the Regality of Ogilface.

IN a declarator of a liferent escheat, it was *alleged*, That there could be no escheat upon the horning libelled; because it was upon letters directed by the Secret Council, upon a decret of a Regality court; and, by the acts of Parliament, the Lords of Session are only warranted to direct letters of horning summarily upon the decreets of Sheriffs and Bailies of Regality and other inferior judges.

THE LORDS thought that the Council could not direct letters of horning upon the said decret; seeing, before the acts of Parliament, letters of horning could not be directed upon the decreets of inferior judges summarily, without a decret conform before the Lords of Session; and statutes being *stricti juris*, the Council could not direct letters, unless by the same statute they had been warranted to that effect; and it appears, that the said statute was founded upon good reason and considerations, though they be not expressed, viz. That the Lords of Session are always sitting in the time of Session; and in vacance, there is some of their number appointed to receive and pass bills of suspension, if there be cause; whereas the Council sitteth but once a-week ordinarily in Session time, and in vacance but thrice; *2do*, The Lords do not pass suspensions but upon good reasons, and they are to consider the said decreets, which is not proper for the Council; *3tio*, As suspensions are raised of the said decreets, so oft times there is a necessity of raising reductions, and the Lords of Council are not competent judges to the reduction of the said decreets. But the Lords thought not fit that there should be a question betwixt them and the Council concerning their privilege; and therefore did forbear to give answer until some accommodation should be endeavoured. And it was proposed by some, that the decret of the Regality court being for keeping of conventicles, and that practice concerning so much the peace of the country, that all disturbance

No 16.

ders from deponing, or from any thing requiring their personal presence.

No 17.

Found that a horning directed by the Secret Council, upon a decree of a court of regality, was inept.