No 22.

But now as to the question itself, How far the Lords are obliged by law to give warrant for horning in this case? It was observed, that while apprisings were in use, the superior was by statute bound to receive the appriser, as now the adjudger; but then he could not be charged so to do upon the apprising, as being only pronounced by messengers as Sheriffs in that part; but such charge proceeded upon the allowance, which was in effect a decree of interposition by the Court of Session, and wherein there was an express decerniture against the superior.

But where adjudications *cognitionis causa* proceeded before the Session, the custom originally was, after such decree of adjudication *cognitionis causa*, to raise a new process against the superior, and upon the decree following thereon, the charge against the superior proceeded. But this process the Lords came to dispense with as unnecessary; and, in the very decree of adjudication, to decern against the superior. From the example whereof, it seems to be, that Sheriffs have in their decrees also fallen into the use of decerning against the superiors, which was agreed to be beyond their power.

For as to the act of Parl. 1606, cap. 10. which requires the Lords to direct letters of horning on the decrees of Sheriffs, it was plain, that only respected decrees for payment or performance against parties regularly called before them. Whereas, in this case, the decree against the superior is a decree against a blank person, and who may even not have been resident within the Sheriff's jurisdiction at the time.

The Lords therefore found as above, as there was no law whatever authorizing such horning.

Kilkerran, (Adjudication and Apprising.) *No* 13. *p*. 9.

1743. *November* 2. Home Campbell, Petitioner.

No 23.

The House of Lords having, upon appeal, reversed a decree of the Court of Session, and remitted back with orders for that Court, to give all necessary aid for carrying the judgment into execution; application was made by the prevailing party, for warrant for letters of horning in common form. The Lords thought the proper method was to give decree for the sum in the judgment, on which letters of horning might, in common course, be applied for.

Fol. Dic. v. 3. *p*. 275.

*** See Lord Kames's report of this case, *voce* Summar Application.

1750. *February* 24. Fergusson *against* Heron.

No 24.
A bill of horning cannot be stopped upon

Heron of that ilk, becoming purchaser of the lands of Clouden, at a judicial sale before the Lords, Fergusson of Halhill, was, by the decree of division,

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 allegeance, 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 competent on the decree of a Baron Bailie.

1753. *June* 16. ROBERT CORMACK *against* GEORGE ROGER.

ROBERT CORMACK obtained decreet 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 decreet.

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.