

No 113. that the execution should proport the same to have been used ; and the execution not bearing the same, the same could not be sustained, but the horning for want thereof ought to be found null.—THE LORDS repelled this allegiance ; but found, that the user of the horning ought to prove, that the messenger truly gave three blasts at the time of his denouncing the rebel, which being proven, albeit the execution proported not the same, seeing it proported and bore that he orderly and lawfully denounced the rebel ; the LORDS sustained the horning, because these words, *lawfully and orderly*, included all these solemnities, the same being proven to have been truly given, as said is.

Act. ———.

Act. *Miller, Foulis, et Belsbes.*

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 266. Durie, p. 116.*

\* \* Spottiswood reports the same case :

IN an action to make arrested goods furthcoming, pursued by Thomas Drysdale, assignee constitute by Sir James Durham, against the Laird of Langtoun, it was *excepted*, that it was an assignation made by a rebel *stante rebellione*. *Replied*, That the horning was null, the officer not having made mention in the executions that he had used three touts, which is a formality not to be omitted. This was very much agitate, and at last found, that that want was supplied, in so far as the officer had said that he lawfully denounced him, he always taking on him to prove that he had not omitted to give the three touts.

*Spottiswood, (HORNING) p. 146.*

1626. *March 22.*

SOMERVEL, Donatar to the L. Edmiston's Escheat, *against* ———.

No 114.  
Found as  
above.

IN a declarator pursued of the L. of Edmiston's escheat, at the instance of Lewis Somervel, servitor to the Lo. Erskine, it being *alleged*, that the horning was null, because the denunciation bore not, that three blasts of the horn were used ; and the pursuer *replied*, that the execution bore, that he duly and lawfully denounced ; the words, duly and lawfully, must be understood to comprehend all solemnities requisite, specially where there is no law requiring, that the execution should bear that clause, or that it is necessary to be done.—THE LORDS repelled the allegiance, and sustained the horning, but found it necessary, that the pursuer should prove that three blasts were given by the officer at his denouncing of the defender, which being proven to have been truly and actually done, albeit it was not so exprest in the written execution, the LORDS found it sufficient, and that the want of these words was no ground of nullity ; and this was ordained to be proven, because the witnesses, and the messenger, executor of the denunciation, were on life presently ; but if the witnesses were dead, in

any of the like cases, when it occurred, the LORDS inclined to sustain the horning without necessity of such probation, the execution bearing, that the officer lawfully denounced, seeing there was no law requiring that solemnity specially to be recorded in the execution.

No 114.

Act. *Hope.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. I. p. 266. Durie, p. 195.*

\* \* Kerse reports the same case :

FOUND the horning wanting three blasts is not absolute ———, where the witnesses are living, the LORDS will have the party prove that three blasts were used ; but, where they are dead, they will sustain the horning, except it be improven.

*Kerse, MS. fol. 220.*

\* \* Spottiswood reports the same case :

Lewis Somervél pursuing a declarator of the Laird of Edmiston's escheat, upon a horning execute at his instance, the same want of three touts was alleged against the horning, but the LORDS, as before, No 113. p. 3765. sustained it to be proven by witnesses.

*Spottiswood, (HORNING) p. 147.*


---



---

 S E C T. VI.

## Public Reading and Oyesses.

1680. February 20.

GORDON against GRAY.

A HORNING was quarrelled as null, because it bore the oyesses, (which in strict grammar construction signifies no more but two) whereas the law required three oyesses. 'THE LORDS found it null for this defect.' *Vide* 14th July 1680, the same decision in the case of an interdiction. THE LORDS reduced an interdiction, because the publication did not bear three oyesses given.

No 115.

*Fol. Dic. v. I. p. 266. Fountainball, v. I. p. 86 & 107.*