

that the gift and disposition of his escheat was made and disponit before the time or he was lawfullie put and denunciit to the horn, and against the tenour of the act of Parliament made be James Earl of Murray; and also that he was not denunciit lawfullie and orderlie, in so far as he was not denunciit at the heid burgh of the shyre where he dwelt, after the manner of the act of Parliament made in *anno* 1579, cap. 75. 'anent the punishment of persons that contempt-ouslie remain at the King's horn,' that relaxations and denunciations of hornings sould be made at the heid burgh of the shyre where the partie dwells. And also it was reasonit be the advocate, that the act of adjournal buir that the said Earl sould be denunciit at the croce of Edinburgh, and uther places neidfull; and thir words, 'uther places neidfull,' were put *copulative, et debent aliquid operari*; and so he behovit to have been denunciit not onlie at the mercat croce of Edinburgh, but also at uther places neidfull, whilk was the head burgh of the shyre where he dwelt and had his residence at that time. To all this was *answerit peremptorie*, That they offerit them to prove that it was and has been ane custom inviolablie observed be the space of 100 years, and sundrie and diverse sentences given thereupon, and sundrie and diverse hornings containeid into the register of the same tenor; and of the law, *inveterata consuetudo est vice legis*, that the partie has been put to the horn, and denunciit rebel at the place where the compearance sould be, and specially that be the foresaid space, that parties being summoned to compeir at Edinburgh to underly the law, and them not compeiring, have been denunciit rebels, and put to the horn at the croce of Edinburgh, and no uther place, and this to have been observit dayly to this present.—THE LORDS, after long reasoning, pronuncit be interlocutor, That the reason of the summons was relevant, notwithstanding of the exception whilk was appearandlie to be verie particular. THE LORDS were movit be the act of Parliament before rehearst, and *leges predict., de quibus consuetudo habet locum quando non est lex scriptum*.

Fol. Dic. v. 1. p. 261. Colvil, MS. p. 366.

1626. June.

STIRLING against ABERNETHY.

HORNING against a person dwelling in a regality, is sufficient, if he be denounced at the head burgh of the shire, except the defender would allege, that there is a head burgh of regality and a clerk resident with a register, who was in use to registrate hornings before the time contraverted.

Fol. Dic. v. 1. p. 261. Spottiswood, (HORNING.) p. 146.

1672. January 11.

JAMES SCOTT against BOYD of Temple.

MR JAMES SCOTT being donatar to the liferent of escheat of Boyd of Temple, did pursue a general declarator upon the gift.—It was *alleged*, That the horn-

No 58.
nounced at the head burgh of the shire where he resides, otherwise the denunciation is null, and this notwithstanding of 100 years uninterrupted custom to the contrary.

No 59.

No 60.
Found as in No 59.