

No 9. probation, seeing that horning, albeit it was contained in the gift, yet it was not used by the pursuer to recover declarator thereon, but only to debar him.

Alt. Russel.

Alt. Lawrie.

Clerk, Gibson.

Fol. Dic. v. 2. p. 85. Durie, p. 202.

\*\*\* Spottiswood's report of this case is No 4. p. 5732, voce HORNING.

1628. June 13.

RULE against L. AITON.

No 10.  
In a libel of count and reckoning, in which no specific sum was concluded for, the defender offered to account, yet the pursuer was allowed to debar him by horning.

In an action of compt and reckoning at the instance of James Rule against the Laird of Aiton, the defender being debarred by the pursuer by horning, and the defender *alleging*, That the pursuer could not debar him by horning, seeing he offered instantly to compt and reckon with him, which being the desire of his summons, it was the only thing which could be decerned in this process in favours of the pursuer; and the defender being ready to do and fulfil that, for the which sentence allenarly might be given, viz. to compt and reckon, therefore he could not be debarred from doing of that which the decret could decern him only to do. THE LORDS, notwithstanding of the allegiance and offer to compt, found that he was debarred, and so in respect that he was at the horn, that he had not a person to stand in judgment, and decerned; which decret extended only to ordain the defender to compt, which was offered as said is, without any sentence, but in respect of the horning refused, yet the LORDS declared that they would give suspension without caution, seeing the decret being only general for compt and reckoning, not containing a special sum, it was hard to find cautioners in such generals, not being certain nor special in the quantity of the sum, nor liquidate what the same was:

Act. ———.

Alt. Belshes.

Clerk, Hay.

Fol. Dic. v. 2. p. 85. Durie, p. 374.

\*\*\* This case is reported by Spottiswood, No 5. p. 5732, voce HORNING.

No 11.

1629. January 29.

KELLIE against WINRAM.

CIVIL rebellion debars a Judge from the exercise of his office, and he may be declined upon that head.

Fol. Dic. v. 2. p. 85. Durie.

\*\*\* This case is No 28. p. 7313, voce JURISDICTION.