

1663. February 19. LADY SWINTON *against* TOWN of EDINBURGH.

No. 18.

Horning granted against Magistrates of a town upon their act of Council.

The Magistrates and Council of Edinburgh having granted them to be debtors to the Lady Swinton, by way of act, conform to their custom, the Lady supplicated, That the Lords would grant letters of horning upon the said act: Whereupon the Magistrates, being cited upon twenty-four hours, alleged, They were not convenable *hoc ordine*, by suing letters of horning upon a bill, but it ought to have been by an ordinary summons, either craving payment, or letters conform.

The Lords, notwithstanding, granted letters of horning.

*Fol. Dic. v. 2. p. 404. Stair, v. 1. p. 184.*

1699. February 28.

CREIGHTON of Auchingoull *against* VISCOUNTESS FRENDRAUGHT.

No. 19.

Creighton of Auchingoull, now apparent heir to the Viscount of Fren draught, gives in a bill, craving to remove the last Viscount's Lady from the manor-place, orchards, and parks, in regard she suffered them to go to ruin; and, not being liferentrix thereof, he could not charge her on the act of Parliament to find caution to uphold them; the Lords refused the bill, because, though these removals were to be summary by our law, yet it behoved always to be on a citation and process. See No. 1, 2, & 8.

*Fol. Dic. v. 2. p. 403. Fountainhall, v. 2. p. 49.*

1699. July 25.

ROBERT YUILLE *against* JAMES RICHARDSON, Merchant in Glasgow.

No. 20.

Within what time summary diligence on a bill is competent.

A bill of exchange for £.200 Sterling is drawn by Mr. Richardson on Mr. Kite, a corn-factor at London, payable to Yuille. It is dated the 15th October, 1698, and payable at a month's sight thereafter. It is not protested for not payment till the 20th April, 1699, against Kite, and the 27th of April against Richardson, the drawer, and it then is registered, and Richardson charged; who suspends, That, by the act of Parliament 1681, bills must be registered within six months after their date, otherwise no summary execution can pass thereupon; but *ita est* this was protested after the six months, and so the charge is unwarrantable. Answered, The act of Parliament distinguishes two cases; either it is protested for non-acceptance, and then it must be registered within six months of the date of the bill, or for not payment, and then within the term the bill falls due: But so it is, this protest was for non-payment, and the protest and registration being within six months of the day at which it was payable, it was both legal and warrantable. Replied, There ought to have been a protest for non-acceptance first, which was not here; and, by supine negligence for five months, you suffered the debt to