

1677. *January 10.*SCOTT of Bavilla *against* MARGARET DALMAHOY, LADY BONNINGTON.

No 63.

Gifts of escheat upon horning and denunciation, at the market cross of the head burgh of the shire where the rebel dwells, and his lands lie, are valid, although the lands be annexed to a regality in another shire, where apprisings and inhibitions can only be used.

IN a reduction of a gift of escheat of Robert Scott of Bonnington, granted to Margaret Dalmahoy his relict, at the instance of Mr Robert Scott of Bavilla, upon the reason that the lands of Bonnington being annexed to the regality of Renfrew, the denunciation at the market cross of Edinburgh was null, seeing by act of Parliament all denunciations ought to be at the head burgh of the regality whereof the lands are a part, against all the heritors of the lands; which act is without distinction, ordaining them to be all regulate there; it was *answered*, That the lands of Bonnington lying within the sheriffdom of Edinburgh, where the heritor himself did reside, and where he was charged with horning, the denunciation at the market cross of Edinburgh was most lawful, being conform to the universal custom and practice of this kingdom, whereupon all gifts of single escheat are granted and sustained; and whereas lands are annexed to regalities lying in other shires, belonging to the superiors of the lands, the effect whereof is only as to real executions upon comprisings or inhibitions; but as to a personal charge for payment of debt, it was never observed nor found a ground of nullity.—THE LORDS did sustain the gift upon the denunciation, for not obeying a personal charge for payment of debt, and found, That annexation to lands within another shire did only require real executions, wherein the superior might be concerned, to be at the head burgh.

Fol. Dic. v. 1. p. 261. Gosford, MS. No 935. p. 614.

* * * Dirleton reports the same case :

A HORNING against a person dwelling within the shire of Edinburgh, upon lands annexed to the barony of Renfrew, being denounced at Edinburgh, was sustained, in respect that the said lands were locally within the shire of Edinburgh; and the rebel, in respect of his residence there, was liable to the jurisdiction of the Sheriff, and to all burdens, and had all capacities competent to the shire of Edinburgh.

Clerk, *Hay*.

Dirleton, No 422. p. 210.

* * * This case is also reported by Stair :

BAVILLA pursues reduction of a horning execute at the market cross of Edinburgh, against Robert Scott of Bonnington, whereby his escheat is carried away in prejudice of him a creditor, on this reason, That the party denounced dwelt then at Bavilla, which is a part of the principality, and is within the regality of Renfrew, and yet the denunciation was at Edinburgh, and so is null by the act of

Parliament.—It was *answered*, That the place of denunciations is ruled by custom, and no regality requires a denunciation there, unless it have a head burgh, a known cross, and a register kept there; and the act of Parliament requires only denunciations at the head burgh of the shire, or the other jurisdiction where the denounced dwells, which can only be understood of the shire where his lands and dwelling lie locally, and not by annexation, which cannot be known to creditors, and which is frequently changed by uniting of baronies; so that the principality having known jurisdictions, but having many other scattered lands through the whole kingdom annexed thereto, denunciation at the crosses where these lands locally ly, must be sufficient.

Which the LORDS found relevant, and sustained the horning, unless it were proven that it was notour and commonly known, that denunciations and other executions against persons dwelling in the barony wherein the denounced dwells, were at Renfrew.

Stair, v. 2. p. 491.

1682. *January 27.* DUKE OF HAMILTON *against* CASTLEMILK.

THE LORDS inclined to find an execution of a charge of horning null; for that it bore the party to have been charged at his dwelling-house, and did not design the dwelling-house as in such a town and shire; but the point was not voted.

Thereafter another execution being quarrelled as null, for that it is said only, that the messenger passed to the market cross of Edinburgh, without mentioning that it was the head burgh of the shire where the party dwelt; and that it not being asserted in the execution, that he lived within the shire of Edinburgh, his escheat and liferent could not fall by that denuciation; especially considering, that it is usual to denounce persons at Edinburgh, in order to caption, who live in the north.

THE LORDS, upon the pursuer's offer, allowed him, in fortification of the denunciation, to prove, that the rebel lived the time thereof within the shire of Edinburgh; and declared they would advise the probation *incidenter*, without the order of the roll, in respect the pursuer allowed, *ex gratia*, the defender to propone the reason of reduction raised at his father's instance, before it was transferred, or the defender so much as served heir in general or special.

February 2. 1682.—BUT the execution being registered with that nullity, it is debateable if it can be supplied by such a probation; and probation being led, the LORDS found, That Sir Ludowick, the time of the denunciation, lived at Edinburgh; and therefore sustained the denunciation, and decerned.

Harcarse, (HORNING.) No 512. p. 142.

No 63.

No 64.

A person being denounced at the cross of Edinburgh, and it not being mentioned that he lived in that county, a proof was allowed that he did live there.