

It is alleged for George Craw, That the horning, whereupon the gift of escheat proceeds, is null, in so far as, before the date of the denunciation, a bill of suspension of the charge of horning was passed by the Lords of Session, upon unanswerable grounds of payment and compensation of the debt charged for; after which no denunciation could be made, nor escheat fall, and all diligence thereafter was fraudulent and null: and a practique *in terminis* was alleged on in 1668, between Renton himself and ———, wherein the Lords found diligence done after a bill of suspension was passed, to be null, illegal, and unwarrantable.*

To this it was REPLIED, *Imo*, The nullity *non competit hoc loco* by way of exception. It must be insisted on by way of reduction, and in which the superior, viz. his brother Sir Alexander Home, (though he, by the tacks his father set to him, bruiks it,) must be called, who cannot be prejudged *cum res illius agatur*. *2do*, *Non relevat*, unless they be able to say the suspension was passed, signeted, and intimated to the charger, or messenger; since no other deed (being *res inter alios acta*) could prejudice them, or put them in *mala fide*.

DUPLIED, *Imo*, Though it be *nullitas facti* and not *juris*, yet, being instantly proven by production of the passed bill of suspension, compared with the date of the denunciation, *frustra* am I remitted to a reduction. *2do*, Oppones the foresaid practique in 1668, where there was no intimation; *et scire debere*— &c.†

The Lords found the allegiance of nullity not receivable *hoc loco*, till we called the superior in a reduction; and he being once *in campo*, reserved the consideration of the relevancy thereof to that place. But it seems hard it should annul the course of diligence before intimation made. *Vide supra*, No. 252. [11th November, 1671.] *Vide decisionem sequentem*.

Advocates' MS. No. 423, folio 227.

1673. November. JOHN SOMERVELL *against* THOMAS BEG.

JOHN SOMERVELL, wright and poultryman in Edinburgh, having charged one Thomas Beg, upon a decret of removing, obtained before the bailies of Edinburgh, Beg presents a bill of suspension to the Lord Preston, then Ordinary on the Bills, where it depends eight or ten days without an answer; which Somervell judging equivalent to a refusal, and imagining no legal stop, incarcerates Beg, on an act of warding, in the tolbooth of Edinburgh; who, upon a petition to the Lords, and Preston's assertion that he had verbally stopped execution till some things were cleared, Beg was ordained to be set at liberty, and Somervell sent to supply his room, for contemning the Lord's authority, the depending bill not being rejected. *Vide præcedentem practicam*. *Vide infra*, No. 499, Laird of Pittarrow and ———, [October, 1676.] *Vide* 7th November, 1678, James Johnston.

Advocates' MS. No. 424, folio 227.

* See Stair's Decisions, 30th January, 1663, Mr Andrew Hamilton.

† *Vide infra*, numero 463, Marquis of Atholl, [February, 1676;] *infra*, No. 711. Deans and Purves, [18th January, 1678.]