

No 7.

tion, and preferred the pursuer, in admitting of his reason to prove, that he dwelt *alibi*; which was done, because he offered to prove the same by witnesses, condescended upon by him, which were *omni exceptione majores*, viz. barons, advocates, or ministers, albeit the excipient offered to prove his allegiance, by famous unsuspected witnesses.

Act. *Præsent*,Alt. *Nicolson & Fletcher*.Clerk, *Hay*.*Durie*, p. 512.

No 8.

1630. *March 24.* M'ALISTER *against* CUNNINGHAM.

In a suspension, the suspender being debarred *ab agendo* by horning, which he *alleged* to be null, because it was not stamped; the LORDS would not in this process find the horning null, but reserved that nullity to be tried in an ordinary pursuit, but they found that the suspender had *personam standi in judicio*, notwithstanding of that horning, and that he was not debarred thereby.

Act. ———

Alt. *Cunninghame*.Clerk, *Scott*.*Durie*, p. 523.

No 9.

1631. *March 2.* CHISHOLM *against* M'DOWGAL.

In an action pursued by Walter Chisholm against Sir William M'Dowgal, the pursuer having declared that his name was only borrowed to the behoof of John Home of Howletston, the defender debarred the said John Home with horning. *Answered*, That the action not being pursued in his name, he could not be debarred, especially by the defender who was not a creditor to the said John. THE LORDS found, that as rebels could not pursue in their own name, no more could they in another's to their behoof, otherwise it were *fraudem facere legi*.

Spottiswood, p. 153.*** This case is reported by *Durie*, *voce* PERSONA STANDI.

No 10.

A horning
against a
wife, *stante*
matrimonio,
found null by
exception.

1633. *February.* STUART *against* BANNERMAN.

JAMES STUART pursued a general declarator of Christian Bannerman her escheat. *Alleged*, No declarator against her, because the horning was against

her *stante matrimonio*, and so *quoad eam* null. *Replied*, The horning must stand good, proceeding upon a cause which was the proper fact and violence of the defender, viz. an ejection committed by her. *2do*, It cannot be taken away so summarily, but must abide reduction, because it proceeds upon a decret of ejection recovered against her and her husband; which they having suspended, the letters were found orderly proceeded against them compearing; and so the horning being founded upon decreets standing unreduced, cannot be taken away *via exceptionis*. *Duplied*, The horning and decreets are all null, in respect of her who was for the time cloathed with a husband. THE LORDS found the exception relevant. Yet afterwards the King's Advocate, lest it should pre-
 judge the King in other cases, made the parties pass from their allegiances with consent, and got the interlocutor cancelled.

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Spottiswood, p. 153.

* * * This case is reported by Durie, *voce* HUSBAND AND WIFE.

1634. July 8.

L. LAUCHOP *against* —.

L. LAUCHOP having right from the donatar of umquhile Gavin B. of Gallo-
 way's liferent, after general declarator, pursues by special declarator, the in-
 tromitters with the duties of his benefice pertaining to him, of certain years
 addebted to the said umquhile Bishop, wherein the horning being produced
 whereon the gift and declarator proceeded; the defender alleged the horning to
 be null, because there intervned three years betwixt the execution of the charge
 and the denunciation; which allegiance was repelled, and notwithstanding there-
 of the horning found sufficient and well executed; because, before the denun-
 ciation there proceeded an intimation made to the umquhile rebel two days be-
 fore he was denounced; which intimation proported, that the party at whose
 instance the horning was executed, had obtained a protestation before the Lords
 of Session against a suspension of these charges, purchased by the said umquhile
 Bishop, by which protestation the letters were ordered to be put to execution,
 which being so intimated to the said umquhile Bishop by the officer, the Lords
 found the officer might thereafter denounce; and the denunciation being made
 within two days after the said intimation, it was found sufficient, and that there-
 needed no new charge to have been given by the messenger: For the alleged
 length of time that intervned since the said first charge, as the defender alleg-
 ed, ought to have been given before he could have been denounced, and that
 the intimation was not enough to warrant the denunciation without a new
 charge, especially such an intimation upon two days allenary before the de-
 nunciation; likeas they alleged, that if any intimation might be sustained to
 supply the charge, and sustain the horning, yet the same ought not to be upon
 so short a space as two days, but that there was requisite as many days to have

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A horning found good, though three years intervned betwixt the charge and the denunciation, because intimation had preceded the denunciation.