

a general relaxation and suspension from all hornings whatsoever, without necessity to express any particular, and which he might execute by a general execution of relaxation at the market-cross of Edinburgh without necessity of any particular citation, and which they declared they would grant, and granted the same to that effect, that his brieves might not be staid, but that the Judge and assizers might proceed therein notwithstanding of any hornings to be produced against the impetrator of the brieves; and, albeit there was a contrary supplication given in by the creditors and others who were infest in the lands by the Earls of Crawford, that the hornings might have that effect which in law they ought to produce, yet the other bill was granted, and the creditors' bill refused; for the LORDS found that the service would tend to the creditors' benefit.

No 15.

*Fol. Dic. v. 2. p. 86. Durie, p. 520.*

\* \* \* Auchinleck reports this case :

1630. *June 22.*—NOTWITHSTANDING that the LORDS refused a general relaxation from all horning to the Earl of Cassillis upon the day of his service, yet the like favour being craved by the Earl of Crawford and the Laird of Coss, by bill, the day of their service to one of the Earl of Crawford's predecessors; the LORDS granted the desire of the bill, only *ad hunc effectum*, that they might have place to stand in judgment till they were served, without caution, which singular favour was granted for two respects; *imo*, Because, by their service, no creditor would be prejudged, but the debtor made more able to give his creditor satisfaction; *2do*, In respect the prescription was so near, and if they lost this day, they lost their action for ever.

*Auchinleck, MS. p. 87.*

1631. *March 8.*

CHISHOLM *against* M'DOUGALL.

In a pursuit at Walter Chisholm's instance, as assignee constituted by the Goodwife of Gallashiels, and John Hume her spouse, against Sir William M'Dougall, for payment of certain duties of lands pertaining to her in terce, intromitted with by Sir William, wherein horning being produced against John Hume, spouse to the said Goodwife of Galashiels, in respect whereof he *alleged*, That no process could be granted at the assignee's instance; the LORDS found, That seeing the assignee declared that this pursuit was moved to the behoof of his cedent the Lady Galashiels, albeit the assignee was not at the horn, yet the cedent's husband being at the horn, as the said horning would have debarred her of it if it had been pursued at her own instance and her said husband's, so it should also stay the process at the assignee's instance, being done to their use, as said is; which was so found, albeit the principal party, viz. the Goodwife of

No 16.

Competent to any party, though neither creditor nor donatar, to object, *non persona standi.*

No 16.

Galashiels, was not at the horn, and albeit the horning was only produced by the defender, who was neither creditor nor donatar; and that no donatar nor creditor used the same, and though it was to stay process for the Lady's means of her aliment.

Act. ———.

Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 84. Durie, p. 577.*

\* \* Spottiswood's report of this case is No 9. p. 5734; *voce* HORNING.

1632. *March 6.*REDICKS *against* DALBATHIE.

No 17.

IN a suspension of a decret for payment of the duties of lands, the suspender being debarred by horning execute against him at the charger's instance, and his cautioner in the suspension desiring to be admitted to produce the suspension, and to insist therein; and the charger renouncing all action against the cautioner, *alleging* him to be irresponsible; and thereafter one Maxwell, who, as Magistrate, being charged to take the rebel, was pursued *actione subsidiaria* for the sum, he desiring to insist in the suspension as the party whom the same concerned. THE LORDS found, That neither the cautioner, nor the Magistrate convened, could be heard to insist in this suspension, the cautioner therein being irresponsible, except that a cautioner were found good and responsible by the party, or one of those compearing, to pay the debt libelled, in case they prevailed not in the suspension.

*Fol. Dic. v. 2. p. 85. Durie, p. 626.*1636. *July 8.*L. COLSTON *against* LO. CRANSTON.

No 18.

An excommunicated person may insist in a process.

IN a suspension of a decret of removing obtained by the Lo. Cranston against Colston, wherein a sentence of excommunication being pronounced and extracted against Colston for incest, in respect whereof the charger *alleged*, That he had no person to stand in judgment; the LORDS found, That the suspender ought to be heard to insist in his suspension notwithstanding that he was so excommunicate, seeing he was not at the King's horn; for they found, that excommunication could not prejudice the party of these things, *quæ sunt juris naturalis vel juris gentium*, as was to defend themselves with their lawful rights; but I think, and then was of the mind, that a person excommunicate for so vile a crime as horrible incest, which was fearfully related and aggravated in the sentence, bearing 'the party to have lain in double incest (for so were the words of the sentence) and that for no admonition he could forbear,' ought not to be admitted to have any favour in any civil judicatory, which was not granted to