

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