

1685. November.

SHAW against M'MILLANS.

A DISPOSITION *omnium bonorum* being quarrelled by the disponer's creditors, that had done no diligence, upon this reason, That he was notourly bankrupt, and so could not prefer one creditor to another, as was found in Tarperfie's case, No 28. p. 899.

THE LORDS sustained the reason thus qualified, viz. That the disponer was under several hornings, and his debt exceeded his free gear before the disposition, and the disposition was of all his estate, real and personal; and resolved to determine so in other cases: But found, That the raising of horning was not sufficient, unless the party were denounced, and [the horning] registrate; and it would appear that one horning would not be found sufficient.

*Harcarse, (ALIENATION.) No 138. p. 29.*

1686. February.

SIR JAMES COCKBURN against Provost MILN and Others.

IN a competition of the creditors of Grange, it was *alleged* for Sir James Cockburn, That the common debtor being denounced at his instance, could not prefer and gratify another creditor, who had done no diligence.

*Answered, 1mo,* The denunciation being only at the market-cross of Edinburgh, where the party did not live, it could only be the foundation of a caption, and could not affect any part of the debtor's estate, seeing the contempt did not infer rebellion; and so cannot be reputed such a diligence as the act of Parliament requires. *2do,* The debtor was not bankrupt by that horning, for he was then in a reponsal condition.

THE LORDS sustained both the answers.

February 1686.—FOUND, That a denunciation to the horn at the market-cross of Edinburgh, where the party did not live, was not a sufficient diligence to hinder gratification, since his *escheat* did not fall thereby; and it was not a diligence *ordinata* to affect the goods, as other hornings are.

*Harcarse, (ALIENATION.) No 140. 143. p. 29. 30.*

1686. March 16.

BAILIE GARTSHORE against SIR JAMES COCKBURN.

A CREDITOR having executed an inhibition against Sir Walter Seaton his debtor, personally, upon the first of February, and published it at the market-cross of Linlithgow upon the 4th, registrate the same upon the 6th day: The debtor,

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No 141.

One horning, particularly when not followed by denunciation and registration, held not sufficient to found reduction.

No 142.

Denunciation at the market cross of Edinburgh, (where the debtor did not reside,) found not sufficient diligence.

No 143.

An inhibition not yet registered, but *in cursu*, sufficient to