

and therefore he ought to bring back the horning, and cancel it, as unwarrantable ; because after suspensions is past, execution of the first decret is thereby suspended, till by an extracted decret of suspension the letters be found orderly proceeded, and be ordained to be put to further execution ; after which the charger may either put the letters upon the first decret to further execution, or take new letters upon the decret of suspension ; but before extracting, the suspender is still *in tuto*, and may apply to the Lords. It was answered, That after pronouncing of the decret, albeit not extracted, the charger might warrantably point or denounce upon the first letters, especially seeing the decret was warrantably extracted, without any stop, or application for one. *2do*, By the denunciation, right is acquired to the King of the defunct's escheat, which cannot be taken away summarily, without calling the King's officers. *3tio*, Whatever may be pretended in a suspension past the signet, yet this was but a bill with a deliverance to discuss thereon. It was replied, That the Lords have declared, that warrants to discuss upon bills of suspensions, are in all points equivalent to bills past the signet.

The Lords found that the warrant to discuss the bill was equivalent to a signet suspension, and that the letters upon the first decret could not be put to execution till a decret of suspension were extracted, and therefore granted suspension to the creditors without caution or consignation, but would not call back the horning till the King's officers were called.

Fol. Dic. v. 2. p. 417. Stair, v. 2. p. 834.

1687. November. JOHN HAMILTON against COLONEL BORTHWICK.

In the reduction of a horning upon these reasons ; *1st*, That the executions as registrated did not bear that they were stamped ; *2d*, The Lords having found in a suspension of the charge, that the charger, whose title was an assignation not intimated before the cedent's death, ought to confirm before extracting, which is in effect a turning the decret of registration into a libel, the debtor ought to have charged *de novo* upon the decret of suspension, whereas he was denounced upon the old charge ;

Answered : The registration of horning is principally designed for discovering the casualties of escheat due to superiors, and not like that of inhibition for publication to the lieges ; and the principal executions appear to be stamped. *2d*, Custom requires no new charge upon a decret of suspension.

Replied : All writs ought to be registrated as they are conceived ; and though the stamp itself be the subject only of sense, the words, " And I have affixed my stamp," ought to have been registrated as a principal part of the execution. *2d*, Though when a reason of suspension tends only to take off the charge in part, as when a partial discharge is produced, it is reasonable that the old charge go to execution *pro reliquo* ; yet it is otherwise, when a reason of suspension enervates

No. 41.
cree can be
put in execu-
tion.

No. 42.
When the
state of the
case is altered
during the
suspension,
the letters
ought not to
be found or-
derly pro-
ceeded, but
the decerni-
ture ought to
run in the
terms of a
new decree.

No. 42. the charge *in toto*; and the charger's assignation not intimated in the cedent's lifetime, was not a sufficient title without confirmation, which made in effect a new title.

The Lords gave no answer to the first reason of reduction, but found the horn- ing null upon the second reason, which was repeated by way of exception in a new suspension, and the King and Officers of State not called; and they thought, that to find the letters and charge orderly proceeded, was not the proper decerniture in the suspension, but that it ought to have run in the terms of a new decret.

Fol. Dic. v. 2. p. 417. Harcarse, p. 144.

SECT. VIII.

Consignation.—Caution.

1740. June 18.

M'GARROCH *against* SCOT.

No. 43.
A charge on a decree of modification and locality cannot be suspended but on consignation.

A Minister having charged a tenant for the whole sum, which, by his decree of locality, was allocated upon the lands, whereof the said tenant's mailing was a part; and the tenant having offered a bill of suspension upon caution, it was past upon consignation only, by two consecutive interlocutors, though it was urged, that where the party charged is not decerned against *nominatim* in the decree, then the hornings on such decrees are only called general letters; but when the party is named in the decret, and decerned against *nominatim*, then that is a special decree; and such only are those which the act 1669 forbids to be suspended but upon consignation.

N. B. The last petition was refused by the narrowest majority.

Fol. Dic. v. 4. p. 320. Kilkerran, No. 1. p. 531.

* * * C. Home reports this case :

Mr. M'Garroch having obtained a decret of modification and locality, whereby there was allocated a certain sum to him out of the lands of Davington, he charged Scot the tenant for payment; who offered a bill of suspension, craving the same might be passed upon caution without consignation, upon this ground, that the 6th act 1669, which discharges the suspension of Ministers' stipends otherwise than upon consignation, concerns only the case where the Minister has a special decret for the sums charged for; consequently the statute does not touch charges upon general letters which may be given at random, but where a decret is taken in an