sion, by a registrate horning, was not enough; for, with us, in the case of cautioners, of tutors, executors, factors, &c. who have the *beneficium ordinis et discussionis*, where the pursuer condescends on a real estate in lands or goods, the principle must be discussed really, by apprising or poinding; December 2. 1662, (*see* LEGAL DILIGENCE;) and it is always so decided in the discussing of heirs. No 48.

THE LORDS found, that the defender-cautioner condescending on goods or lands belonging to the messenger, and giving his oath of calumny on the condescendence, the pursuer ought to discuss the same, by poinding or apprising.

Fol. Dic. v. 1. *p.* 249. *Harcarse*, (CAUTIONERS) *No* 242. *p.* 58.

1748. *December* 6. GALL *against* TOWN of FORFAR.

No 49.

A MAGISTRATE being pursued for a debt, as having failed to imprison a debtor who was taken by caption, the defender was found liable, and the other Magistrates *subsidiarie* for the debt, annualrent, and expenses. *Urged* in a reclaiming petition, That a charge, given the community, ought to be suspended; because a registrated horning and denunciation was not a sufficient discussion of the Magistrate, who was primarily liable.——THE LORDS refused the petition.

Fol. Dic. v. 3. *p.* 183.

*** Kilkerran reports the same case:

IN the case mentioned January 29. 1747, *voce* PRISONER, the LORDS having, by their final decree, upon the 12th July 1748, 'Found John Jaffray, bailie of Forfar, liable for the debt due to Agnes Gall, in respect of his letting Provost Binning the debtor escape; and found the other Magistrates as representing the community liable *subsidiarie*.' And on this decree the Magistrates being charged, they presented a bill of suspension, on this ground, That though Bailie Jaffray ought to be first discussed, not one step had been taken towards recovering payment from him, although he was possessed of the property of houses and acres in and about the town,

But it being *answered*, That these subjects were already incumbered by inhibitions and other diligence, the Ordinary 'refused the bill;' and, on advising a reclaiming petition, the LORDS 'adhered,' in respect the petitioners could not condescend on a free subject.

Kilkerran, (DISCUSSION) *No* 1. *p.* 166.

Discussion of Principal Debitors; *see* SOLIDUM ET PRO RATA.

Whether a Debitor who has the benefit of discussion, may be pursued in the same process with the Principal; *see* LEGAL DILIGENCE.

See CAUTIONER.

See APPENDIX.