

## SUSPENSION.

### SECT. I.

#### Effect of Suspension.

1583. *June.* BROOMFIELD *against* HATELY.

IN the action betwixt the Broomfields and the Hatelys, the one of the parties being put to the horn, it was alleged, by suspension, That the horning was not lawfully executed, because, before the time of the denunciation of the same, the letters were suspended, and so the question fell forth, If the horning was taken away, and the strength of the letters, immediately after the granting of the suspension, or not, until the time the same was intimated to the party, and if the party might *interim* use the letters of horning? It was alleged, That there was a practick passed betwixt the Commendator of Cambuskenneth and the Lord Fleming, where the said Commendator reduced a horning passed at the Lord Fleming's instance against him, because the letters were suspended before the time of the denunciation. The Lords, therefore, conform to the said practick passed before, decerned the said letters of horning, and the execution that followed thereupon, to be of no force or effect, conform to the said practick.

*Fol. Dic. v. 2. p. 414. Colvil MS. p. 370.*

No. 1.  
A horning, and execution thereof reduced, because denunciation had followed after the letters were suspended.

1626. *March 31.* GEMMIL *against* BAILIES of GLASGOW.

In an action betwixt Gemmil and Wallace against the Bailies of Glasgow, for payment of a sum addebted to the pursuer by his debtor, who, for not payment, was committed to their tolbooth in ward, and was thereafter put to liberty by them; it was excepted for the Bailies, that they did no wrong to put the debtor to liberty, because, before he was suffered by them to go to liberty, he had sus-

No. 2.  
Suspension found not to be sufficient authority for magistratesto set a debtor at liberty.

No. 2.

pended the pursuer's decret whereupon he was warded; so that the debt being so suspended, and this suspension seen by the Bailies, they had no ground whereupon to detain him any longer, but might lawfully enlarge him. This exception was repelled, seeing the suspension gave no warrant to put the party to liberty, without which, and that they, upon that warrant, had been orderly charged to do the same, they could not, at their own hand, have put him to liberty; for the suspension might have been discussed against the debtor, and so the creditor greatly prejudiced; and they were not judges to consider of that suspension, neither ought to have done any deed prejudicial to any of the parties before it had received a decision, or that they had received a specific warrant for their proceeding, or had been charged to put him to liberty by the Lords' letters.

Clerk, *Gibson*.*Fol. Dic. v. 2. p. 414. Durie, p. 201.*

\* \* A similar case was decided, 25th June, 1642, Whyte against the Bailies of Wigton, No. 16. p. 7793. *voce* JUS TERTII.

1626. July 7.

BROWN against PITCAIRN.

No. 3.

One of two debtors having suspended a charge, the defence, that no execution could pass against the other till the suspension should be discussed, was repelled.

John Brown and Elizabeth Mercer, being executors confirmed to Matthew Allan, recover decret against Patrick Pitcairn, and certain other persons bound with the said Patrick, for a sum of money addebted by them to the defunct; and the said Patrick being charged thereupon, he suspends, upon these reasons, viz. that the decret foresaid was recovered upon the charges of John Brown, the other co-executor; likeas, Elizabeth Mercer promised to him, before ever she should seek any execution thereupon, that she should pay to the said John Brown the half of the expenses bestowed by him in obtaining of the said sentence, and also to refund to him what she had received of the defunct's goods more than her own half; it being of verity, that she had meddled with more than her part would extend to, so that she could seek nothing by virtue of this sentence, she being full handed, as said is, of her own half and far more; and the said John Brown compared in this process, and adhered to this reason, and desired count and reckoning of the said Elizabeth Mercer, co-executor with him. The second reason was, that another of the persons bound conjunctly in the said bond with the said Pitcairn, suspender, had suspended the charges before any charge given to this suspender, which suspension ought to be first discussed before any new charges can be executed against the suspender. These two reason were both rejected; for the Lords found, that Mercer, the other executor, now charger, might charge for the one half of the debt acclaimed, albeit the other executor should not charge for his half, and albeit that the one executor had intromitted with more than her half, but prejudice of the action which any of them might move against the other for count and reckoning, which they found was not proper to come in this suspension, concerning the pay-