

sunday 1629, pursues for violent profits. It is alleged by the defender, that the warning, made at Whitsunday 1629, can infer no violent profits for the corns which were sown before the term to the which he was warned to remove; because he had good reason to shear and intromit with the corns of that year's crop. The Lords gave her only action for the ordinary duties of that year.

*Page 195.*

1630. *January 18.* JAMES FLEMING *against* MARGARET BAIRD and GEORGE AUCHINLECK.

IN a suspension of a horning raised at the instance of Margaret Baird and George Auchinleck, her spouse, for his interest, when the principal horning is produced, being called for in the suspension;—it is alleged by the suspender, That the horning is null; because the same is only executed at the dwelling-house, not designed where the same was. To the which it was answered, by James Fleming, charger, That this nullity cannot be received, *hoc loco*, in a suspension, except the King's Advocate and Treasurer were called. To the which it was replied, That he has no necessity to call the King's Advocate, finding a null horning produced, which bears a nullity in the body of the executions; but, if he were seeking the same to be reduced, the King's Advocate should be called. The Lords, finding the suspenders to be poor, and the sums for the which they were denounced but 22 merks, would not put them to a reduction; but, acquainting the advocate with the matter, with his consent, admitted the nullity *hoc loco*.

*Page 89.*

1630. *January 21.* The EARL of MURRAY *against* DUMBARR of BURGIE.

DUMBARR of Burgie being pursued for a slaughter before the justice, transacts with the Earl of Murray, who assisted the pursuit, and gave to the Earl a bond for £10,000. Burgie, being charged for payment of the said sum, suspends, and raises reduction of the bond. The reasons of both are all one, *viz.* That though the bond bore borrowed money, yet the true cause was, That Burgie, being unjustly pursued for the said slaughter, and fearing the power of his adversary's party, was moved, by his friends, to give the said bond to the Earl of Murray, for satisfaction to his Lordship, in honour, and upon promise made by his Lordship to the friends, that dealt in the business, that the sum should not be exacted; which he referred to the oath of the Earl of Murray, and declaration of the honourable men that dealt with him in the business. The reason was found relevant to be proven by the Earl of Murray's oath *allenary*. The other reason of suspension and reduction was, That this transaction was unlawful, and null by law, *per senatusconsultum*; and although it be *leisom* to the suspender to transact for safety of his life, yet it is not *leisom* to the pursuer of a capital crime, to transact thereanent. The reason being disputed at large, and many laws alleged on both sides,—the Lords found not this reason of reduction relevant to take away the bond; but found the letters orderly proceeded.

*Page 186.*