

No 7.

tion, and preferred the pursuer, in admitting of his reason to prove, that he dwelt *alibi*; which was done, because he offered to prove the same by witnesses, condescended upon by him, which were *omni exceptione majores*, viz. barons, advocates, or ministers, albeit the excipient offered to prove his allegiance, by famous unsuspected witnesses.

Act. *Præsent*,Alt. *Nicolson & Fletcher.*Clerk, *Hay.**Durie, p. 512.*

No 8.

1630. *March 24.*M^cALISTER *against* CUNNINGHAM.

In a suspension, the suspender being debarred *ab agendo* by horning, which he *alleged* to be null, because it was not stamped; the LORDS would not in this process find the horning null, but reserved that nullity to be tried in an ordinary pursuit, but they found that the suspender had *personam standi in judicio*, notwithstanding of that horning, and that he was not debarred thereby.

Act. ———

Alt. *Cunninghame.*Clerk, *Scott.**Durie, p. 523.*

No 9.

1631. *March 2.*CHISHOLM *against* M^cDOWGAL.

In an action pursued by Walter Chisholm against Sir William M^cDowgal, the pursuer having declared that his name was only borrowed to the behoof of John Home of Howletston, the defender debarred the said John Home with horning. *Answered*, That the action not being pursued in his name, he could not be debarred, especially by the defender who was not a creditor to the said John. THE LORDS found, that as rebels could not pursue in their own name, no more could they in another's to their behoof, otherwise it were *fraudem facere legi*.

*Spottiswood, p. 153.** * * This case is reported by Durie, *voce* PERSONA STANDI.

No 10.

A horning
against a
wife, *stante*
matrimonio,
found null by
exception.

1633. *February.*STUART *against* BANNERMAN.

JAMES STUART pursued a general declarator of Christian Bannerman her escheat. *Alleged*, No declarator against her, because the horning was against