supplication, remitted the bill to one of their number, to hear the parties, and to do as he found just, or to report, which gave him the same power as of the whole Lords; and though the bill cannot now be found, yet he who both passed the bill, and the Clerk, will depone thereupon. It was replied, That this warrant could not authorise one Lord in the vacation time to pass the bill, when the charger was neither obliged to attend, nor could get the Lords' answer upon amand. No. 12.

The Lords, without considering the reasons of suspension, found the letters orderly proceeded, as being unwarrantably passed.

Stair, v. 2. p. 56.

1674. *January* 14. M'INTOSH *against* M'KENZIE.

No. 13.
A copy is not sufficient to produce as the charge.

Collin M'Kenzie of Kincraig having apprised the lands of Multovie and others, and having thereupon charged the superior, pursues a removing against Lauchlane M'Intosh of Kinrara, who had apprised the same lands, and was infeft. The said Lauchlane raised suspension and reduction; and the charger having called upon the copy of suspension, the suspension being produced, the charge was given out to see to the suspender, and was returned, inrolled, and now called by the Ordinary. The charger did not insist, or produce the decreet of removing, which was the charge. But the suspender produced the suspension, and a copy of the decreet, and alleged, his reason being relevant, and instructed by the charge, he referred the same to the Lords to be advised, that the letters might be suspended *simpliciter*. The reason of suspension was, that the charger was not infeft, but did only charge the superior, which could be no warrant for removing.

The Lords found, That the reason could not be instructed by the copy, and therefore suspended the letters till the charge were produced. But seeing the suspender had come from the farthest part of the north, to keep the diet of compearance, conform to the books of inrolment, they modified to him £.200 of expenses, if the charge were not produced; but if the advocate compearing for the charger should depone that, since the first calling by the Ordinary, he was not master of the process, restricted the expenses to £.100.

Stair, v. 2. p. 252.

1681. *December* 1.

ALEXANDER GORDON, Procurator-Fiscal of Kincardine, *against* DAVID JAMY.

No. 14.

The Sheriff of Kincardine having declared a man fugitive, for theft, upon an irrelevant dittay, and this being suspended by the Lords, through some mistake, they found the letters orderly proceeded, seeing the party ought to have suspended before the Justices, who are the proper judges.

Harcarse, No. 943. p. 265.

*** Sir P. Home reports this case:

No. 14.

Alexander Gordon, Procurator-Fiscal of Kincardine, having pursued David Jamy before the Sheriff for theft, and he being declared fugitive, for not compearance, and he having thereafter raised suspension and reduction of theSheriff's decreet, upon several grounds of nullity and informalities; it was answered for the Procurator-fiscal, That the said David Jamy having been declared fugitive by the Sheriff's decreet, he had not *personam standi in judicio* before he first relaxed himself, and found caution, according to law, it being a principle in law, that no man can be admitted to propone any defence that is declared fugitive, and at the horn, before he be first relaxed; for if it were otherwise sustained, then the several courts and judicatories would interfere one with another, and that which would not be allowed in one judicatory should be sustained by another, which would absolutely elude the law; for, by that same reason, a party declared a fugitive before the Justices, might compear and crave the benefit of law before the Lords of Session; which were absurd; and therefore law has introduced, that, as a punishment upon any party that is rebel, or fugitive from the law, he should not have the benefit of law; and, therefore, before the said David Jamy relax, and find caution, he cannot be admitted to pursue or defend any action before the Lords of Session;—as, also, the Lords of Session are not competent judges to any criminal case. Replied, That the said David Jamy having raised suspension and reduction of the Sheriff's decreet, upon several grounds of nullity and informality, these must be first discussed; for if the decreet be *ipso jure* null, it cannot have any effect in law, and so cannot be sustained to hinder him to compear, or prejudge him of the lawful defence; and the Lords of Session being competent judges to the reduction or suspension of Sheriffs' or other inferior judges' decreets, even in those subjects whereof they are not proper judges *in primo instantia*, as in the case of divorce, scandal, or the like, so the Lords are competent judges *in secunda instantia*, albeit criminal, to cognosce whether the Sheriff has done prejudice or not. The Lords found, that the said David Jamy had not *personam standi in judicio* before first he relaxed, and find caution in the books of adjournal.

Sir P. Home MS. v. 1. *No.* 22.

1683. *January.*

BROWN, and The CREDITORS of MARJORIBANKS, *against* CHAPLINE.

No. 15.

Upon a complaint at the instance of ——— Brown, and the Creditors of the deceased ——— Marjoribanks, late Bailie of Edinburgh, against Alexander Chapline, writer, the Lords found, That Bailie Marjoribanks having suspended the charge of horning upon a bond, albeit the letters were found orderly proceeded, yet the denunciation upon the former charge was found unwarrant-