

No 16.

Galashiels, was not at the horn, and albeit the horning was only produced by the defender, who was neither creditor nor donatar; and that no donatar nor creditor used the same, and though it was to stay process for the Lady's means of her aliment.

Act. ———.

Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 84. Durie, p. 577.*

* * Spottiswood's report of this case is No 9. p. 5734; *voce* HORNING.

1632. *March 6.*REDICKS *against* DALBATHIE.

No 17.

IN a suspension of a decret for payment of the duties of lands, the suspender being debarred by horning execute against him at the charger's instance, and his cautioner in the suspension desiring to be admitted to produce the suspension, and to insist therein; and the charger renouncing all action against the cautioner, *alleging* him to be irresponsible; and thereafter one Maxwell, who, as Magistrate, being charged to take the rebel, was pursued *actione subsidiaria* for the sum, he desiring to insist in the suspension as the party whom the same concerned. THE LORDS found, That neither the cautioner, nor the Magistrate convened, could be heard to insist in this suspension, the cautioner therein being irresponsible, except that a cautioner were found good and responsible by the party, or one of those compearing, to pay the debt libelled, in case they prevailed not in the suspension.

*Fol. Dic. v. 2. p. 85. Durie, p. 626.*1636. *July 8.*L. COLSTON *against* LO. CRANSTON.

No 18.

An excommunicated person may insist in a process.

IN a suspension of a decret of removing obtained by the Lo. Cranston against Colston, wherein a sentence of excommunication being pronounced and extracted against Colston for incest, in respect whereof the charger *alleged*, That he had no person to stand in judgment; the LORDS found, That the suspender ought to be heard to insist in his suspension notwithstanding that he was so excommunicate, seeing he was not at the King's horn; for they found, that excommunication could not prejudice the party of these things, *quæ sunt juris naturalis vel juris gentium*, as was to defend themselves with their lawful rights; but I think, and then was of the mind, that a person excommunicate for so vile a crime as horrible incest, which was fearfully related and aggravated in the sentence, bearing 'the party to have lain in double incest (for so were the words of the sentence) and that for no admonition he could forbear,' ought not to be admitted to have any favour in any civil judicatory, which was not granted to

a rebel at the King's horn, except that he had satisfied the kirk and made repentance, and the sentence had been suspended some way; for any at God's horn should be refused in all things which are refused to a rebel to the King; but the LORDS ordained him to find caution to satisfy the kirk, and this was repelled, for he might defend notwithstanding thereof, as a suspender is compted; but the canon law permits not any excommunicated person to pursue.

No 18.

Act. Craig.

Alt. Belshes.

Clerk, Gibson.

Fol. Dic. v. 2. p. 84. Durie, p. 812.

1674. January 24.

BLAIR against BLAIR.

GLASCLUN having pursued Ballerd for payment of certain feu-duties, he proponed a defence. The pursuer debarred him with horning. It was *alleged*, That this horning being but a denunciation at the cross of Edinburgh, where the defender lives not, it was null contrary to the act of Parliament, requiring 'denunciations to be at the head burgh of the jurisdiction where the denounced dwells;' and therefore, upon denunciations at Edinburgh, no escheat falls, nor is any relaxation requisite, and so thereby parties were never accounted as rebels, not having *personam standi in judicio*. It was *answered*, That albeit escheats fall not upon such hornings, yet they are not null, for caption is always sustained upon them, and so they watch the person, though not the estate of the denounced. It was *replied*, That such hornings are truly null, and though long custom hath sustained captions execute upon them, whereby the party being present, is put either to satisfy or suspend, yet that is not to be enlarged or drawn in consequence to put the lieges to the necessity to relax from such hornings.

No 19.
Horning at the cross of Edinburgh against a person not residing in the shire, though it is a warrant for caption, does not debar the party from standing in judgment.

THE LORDS found that the denunciation at the cross of Edinburgh could not hinder the party denounced to have *personam standi in judicio*.

Fol. Dic. v. 2. p. 84. Stair, v. 2. p. 256.

1704. June 15. ARNAULD and GORDON against BOICK.

STEPHEN ARNAULD merchant in Rouen, and Gordon his factor, pursue William Boick merchant in Edinburgh, for the price of a parcel of hats, and some counterfeit pearl sent home to him. Boick *alleged*, The Caudebeck hats were disconform to his commission, and not of the size and fineness required; and therefore, by the *ædilitium edictum*, he ought to take them back again, or *actione quanti minoris* deduct proportionally a part of the price. *Answered*, He could not reclaim now, seeing he had accepted them without any protestation or complaint, and paid for them at the custom-house at Leith, and had

No 20.
The subjects of countries at war with our's, have no *persona standi* here.