

## S E C T. IX.

## Denunciation upon a Horning.—Execution against a Body-corporate.

1702. *July 18.* . . . BOGLE *against* ARMOURS.

## No 133.

In a denunciation of a horning, it is not necessary to read the execution of charge.

MARGARET BOGLE and Armour, her children, as donatars to the escheat of James Armour, merchant in Glasgow, their tutor, and of Napier his cautioner, pursue a general declarator of escheat; against which the defenders repeated a reduction of the horning, on this nullity, that the execution of the denunciation at the market cross bore not, that the messenger read the execution at the giving of the charge of horning, as he ought to have done, and generally used to do.—*Answered*, The reading of the charge is no way necessary at the denunciation, but only the reading of the letters of horning, as this expressly bears, and no more is requisite, as appears by sundry denunciations produced wanting that pretended solemnity; and if it were sustained as a nullity, it would endanger to cast many gifts of escheat.—*Replied*, Escheats are in their own nature odious and unfavourable, *et rapienda est occasio* to annul them; and here there is a declaration produced under the hand of Mr John Mitchelson, keeper of the register of hornings, testifying, that generally denunciations bear that clause of reading not only the letters, but also the charge of horning.—THE LORDS considered there was no express law nor act of Parliament requiring that solemnity, and that the custom was not come to be so fixed as to be obligatory, there being denunciations both the ways; and though some cautious messengers adjected that formality, yet that was not enough to make it grow up to an universal uniform practice, or to lay a burden upon others to do the like; and that if it should be found a nullity, it might cast many diligences of creditors; and that it had never been objected nor controverted before, so far as can be gathered from decisions; therefore they repelled the nullity, and sustained the denunciation. *See* Stair, Institut. lib. 3. tit. 3. § 8. where he speaks only of reading the letters.

*Fol. Dic. v. 1. p. 268. Fountainball, v. 2. p. 154.*

1733. *January.*SIR ALEXANDER MURRAY of Stanhope *against* YORK BUILDINGS COMPANY.

## No 134.

IN a process against the York Buildings Company, this *objection* was proponed, That both summons and execution were void, being against no person what-