

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.

No 20.

disposed and sold of the hats. And this being admitted to the pursuer's probation, and coming in this day to be advised; Boick *alleged*, No process at Arnould's instance, because, being a subject of the French King's, with whom we are at war, they can pursue no action during the dependence and continuance of the war; for *hostes publici*, as they have not *jura commerciorum*, so neither have they *legimam personam standi in judicio*, nor *jus persequendi actiones*. And, if this were the cause of a Scotsman pursuing a Frenchman before the Parliament of Paris, he would not only be denied action, but the sum would be confiscated to the public; which is not here craved. *Answered*, Whatever the authors of the war may deserve, or merchants may suffer by captures of their ships and goods at sea, yet it is hard to extend it to private persons craving their just debts, the denying whereof is against the faith of trade; and by the late act of Parliament 1703, allowing an indirect trade with France for importation of wines, this rigour seems to be dispensed with. THE LORDS refused to sustain process at the French merchant's instance. Then Gordon produced a bill of exchange giving him right to the sum, which the LORDS likewise repelled; because the summons was not pursued in his name on that proper right of his own, but only as factor for Arnould, and would not let him transform his summons thus by way of reply.

Fol. Dic. v. 2. p. 84. Fountainhall, v. 2. p. 230.

1706. July 10.

WALTER YOUNG *against* GEORGE YOUNG, Merchant in Edinburgh.

No 21.

Assignment to a plea granted for the cedent's behoof, after he had been debarred *ab agendo* by a registered horning judicially produced; sustained to allow process to proceed at the assignee's instance, without regard to the personal objection against the cedent, who continued unrelaxed.

WALTER YOUNG having charged his brother George upon his back-bond, to denude of some bonds that were in trust in his person, he suspended, and at discussing of the suspension, the charger being debarred *ab agendo* by a registered horning, he then assigned his charge to James Dundas of Breistmill. When the assignee insisted, it was *alleged* for the suspender, That the horning against the cedent must debar the assignee *quia pendente lite nihil innovandum*, and the *jus quasitum* to the suspender, by the sustaining his defence upon the cedent's not having *personam standi* could only be taken away by a relaxation; especially considering, that the assignation to Breistmill is gratuitous for the cedent's behoof.

Answered for the charger; The debarring *ab agendo* by a registered horning being odious, and merely a personal objection, affording no advantage to the proposer, cannot meet the assignee who has *personam standi*. Nor has the suspender any prejudice by admitting the assignee to supply the fictitious legal incapacity of the cedent; since the suspender is not excluded from any defence or manner of probation competent against the cedent; and so *nihil innovatur* by the assignation to the suspender's disadvantage, as he could pretend *no jus quasitum* by debarring of the cedent except a delay.