

1749. December 7. CROMBIE against DUGUID.

## No 22.

In what cases  
a denuncia-  
tion bars a  
*defendens* as  
well as *ad*  
*agendo*.

ELSPETH CROMBIE pursued Patrick Duguid of Auchinhove in a spuilzie, and when compearance was made for him, she opposed his being allowed to defend, in respect he stood fugitate by sentence of the Lords of Justiciary at the Circuit Court held at Aberdeen in spring 1749.

Accordingly the LORDS 'found that he was debarred *a defendendo*, not having *personam standi*;' and this agreeable to the established practice, which never permits rebels to compear or have the privilege of subjects, except in the case where the process requires the personal presence of the defender; such as, where the libel is offered to be proved by the defender's oath, or where he takes a day to produce a progress, or the like. And a petition was refused, praying an alteration in respect he was not yet denounced on the sentence of fugitation.

But nevertheless, a proof of the facts was still necessary, which were not to be taken for truth, upon the pursuer's averment.

*Kilkerran*, (PERSONA STANDI.) No 1. p. 402.

\*\* See D. Falconer's report of this case No 81. p. 4775. *voce* FORFIETURE.

See APPENDIX.