

*Replied*; Though sentences of forfeiture, upon probation of the crime, are drawn back to the date of the committing thereof, yet the declaring a person fugitive infers only contempt in not compearing, conform to the will of the letters, upon which nothing falls but the single escheat, and the liferent if the rebel continue year and day unrelaxed, as in the case of denunciations upon horning.

THE LORDS preferred the assigneee.

*Harcarse*, (FORFEITURE.) No 499. p. 138.

No 80.

1750. January 3. MAGOMBIE against DUGUID of Auchinhove.

PATRICK DUGUID of Auchinhove was declared fugitive at a Justiciary Circuit-court held at Aberdeen, upon a libel of spuilzie and oppression, committed by him against Elspeth Macombie, and thereupon denounced; and she pursued him before the Court of Session for her damages, of which she brought a proof; and, at advising, insisted he ought not to be heard in his defence, as not having *personam standi in judicio*.

*Answered*, A person at the horn is debarred from pursuing, but it were incongruous to summon him, and then to stop his mouth; and the practice has been to allow him to defend.

*Replied*, As a person at the horn cannot appear, no consequence can follow, as a certification for his contemning that summons; and thus a decret will not be given upon holding him as confest; but the pursuer must prove his libel, which the Lords will advise, but will not admit of any compearance; and thus it has been decided. As, on the same principles, a defender in an adjudication, though at the horn, has been allowed to produce a progress, because he was specially summoned to that effect.

THE LORDS, 8th December, found that the defender was debarred from making any defence in this cause, by virtue of the act of fugitation, and letters of denunciation issued against him, from the Court of Justiciary, and duly executed and registered; and this day refused a bill and adhered.

Act. *J. Grant*. Alt. *Brown*. Clerk, *Pringle*.

*Fol. Dic. v. 3. p. 237. D. Falconer, v. 2. No 113. p. 130.*

Error in designation, if it saves from forfeiture.—See FALSA DEMONSTRATIO.

Feu in what cases good against forfeiture.—See FEU.

See Drummond against King's Advocate, 18th July 1749, voce FRAUD, Sect. 2.

See No 29. p. 1426.

See APPENDIX.

No 81.

A person who had been declared rebel at a circuit Justiciary Court, upon a libel of spuilzie and oppression, and denounced rebel for non-compearance, being summoned before the Court of Session in a process for damages, the Lords found, that, by his fugitation, he was debarred from proponing defences.