

## 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-

ever, by name or designation, but in these general-terms, ' the Governor and ' Company.'—*Answered*, The defenders are a body corporate, named in their charter in the terms they are summoned, and authorised to sue and defend in that character, and are thus designed in the contract libelled.—This was pleaded to difference the case from that of a burgh royal, in whose contracts the Provost, Bailies, &c. are expressed by name, and so ought to be cited by name.—THE LORDS repelled the objection, and sustained process. *See APPENDIX.*

*Fol. Dic. v. 1. p. 268.*

No 134.

1747. July 8. BURGESSES OF RUTHERGLEN *against* PROVOST LEITCH.

A PETITION and complaint being given in against the procedure of the Provost of Rutherglen, and others, in taking a poll of the unincorporated burgesses, for choosing eight persons, out of whom four were to be chosen by the Council, to be upon the Council for the current year, in virtue of a warrant of the Lords, as the election of eight made at Michaelmas had been set aside; it was *objected*, No process could be sustained, in respect the whole names of the pursuers and defenders were not insert in the executions, in terms of the act 6th, Parl. 1672.

*Answered*, The act regards only summons, not summar complaints.

THE LORDS, 4th instant, ' repelled the objection.'

*Pleaded in a reclaiming bill*, This objection was sustained in the case of a summar complaint, 20th January last, Councillors of Inverkeithing against Mr John Cunningham\*.

THE LORDS refused the bill.

N. B. An act was extracted before presenting the petition.

*D. Falconer, v. 1. No 197. p. 263.*

No 135.

A summary complaint against Magistrates of a burgh, was cast, in respect the whole names of the pursuers and defenders were not insert in the executions.

1748. February 10.

FORBES and Others, *against* The EARL OF KINTORE and Others.

THE Earl of Kintore, Forbes of Craigievar, and others, had long enjoyed, in form of a society, a conjunct possession of fishing salmon in the river Don, by means of cruives erected in that river; when they were attacked by Lord Forbes, and other heritors, upon the upper part of the river, concluding in their process, that the defenders should demolish their cruives, damages, &c. A no-process was *objected* upon the act 6th, Parl. 1672, to wit, that, in the execution against William Brebner, one of the defenders, none of the other defenders were mentioned.—*Answered*, That neither the statute nor any practice hitherto observed, requires that where a summons is executed at different times against several defenders, every execution ought to recite the names of the whole defen-

No 136.

An action against possessors of a salmon fishing was dismissed, because, in the execution against one of the defenders, the names of the others were not mentioned.

\* Not reported.