

(DUE *ex mora.*)1686. *December 17.*

No 27.
The contrary
found.

A man living in Galloway is denounced at the market-crofs of Edinburgh on a decret: It was *argued*, that the fum in the decret bears annualrent fince that denunciation, by the 20th act of Parliament 1621, as well as it will debar him *ab agendo*, and be the ground of a caption, though it will not make his efcheat fall; and that a naked denunciation (though unregiftrate) will make annualrent due; which the Lords decided, becaufe the act mentions not regiftration; though I think it has been only forgot, and fo muft be fupplied from other acts: And the reafon of the law goes on the debtor's contumacy; now the difobeying the charge makes him contumacious wherever he be denounced; but, on the other hand, fome think, no horning fhould infer this fevere certification of annualrent, but that which is legally executed, and whereon his efcheat would fall. And it was fo found in Stair's Decifions, 26th January 1665, Hutchifon, No 25.

Fol. Dic. v. 1. p. 38. Fount. v. 1. p. 438.

1743. *July.*

COCHRAN of Bridgehoufe, *againft* REPRESENTATIVES of Colonel VANSE.

No 28.
Found in op-
pofition to
No 27. and in
conformity
with Nos 25.
and 26. that
denunciation
at the market
crofs of Edin-
burgh, againft
a perfon not
living within
the jurifdic-
tion, has not
the effect in
law to make
a fum bear
interest.

THE following queftion occurred in a procefs, Whether denunciation at the market-crofs of Edinburgh is fufficient to make a fum bear intereit, being fufficient for caption, though the debtor live not within the jurifdiction?—For the affirmative it was argued, that *Edinburgh* is *communis patria*, and therefore is the proper place for all notifications to the lieges in general; that denunciation upon a horning is a proclamation addreffed to the lieges in general, 'difcharging to receipt, fupply, maintain, or defend fuch a man, our fovereign Lord's rebel, being at the horn, &c.' and therefore the proper place of this denunciation is at the market-crofs of Edinburgh: That it having been the Sheriff's province, before gifts of efcheat were introduced, to gather in the moveables of rebels for the King's ufe, the practice crept in to denounce at the head-burgh of that fhire where the rebel's moveables lay, as a more fpecial notification to the Sheriff to do his duty; therefore, in order to efcheat, a denunciation at the market-crofs of the fhire is neceffary; but to all other purpofes, inter-communing, caption, annualrent, &c. a denunciation at the market-crofs of Edinburgh, addreffed to the lieges in general, is the proper form.

For the negative, the act 20th, Parl. 1621, was fet furth, ordaining, 'That whensoever any perfon is denounced rebel, and put to the horn for not-payment of fums of money, the perfon fo denounced fhall be fubject in payment of annualrent.' And that the denunciation here muft be a regular denuncia-

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tion at the market-crofs of the fhire, was endeavoured to be cleared by the following confiderations: 1^{mo}, By the common law of this land, the Sheriffs were the proper and only officers to execute the King's orders in matters of law, each within his own jurisdiction; and even acts of Parliament, which require the moft general notification, were published in this manner, 1st ftatute Robert I. cap. 34. and act 67, Parl. 1425. Proclamation at the market-crofs of Edinburgh, of acts of Parliament, as a fufficient publication inftead of proclamation at the head-burghs of fhires, was introduced by the act 128, Parl. 1581, which of itfelf makes it evident, that all denunciations were originally at the head-burghs of fhires. 2^{do}, Edinburgh is *communis patria* or *commune forum* to parties out of the country, but not to thofe who live within it; each man being fubject to the jurisdiction of his own Sheriff. 3^{tis}, The file of all letters of horning, as Stair mentions, book 4. tit. 47. § 8. was, 'That the melfenger pafs to the market-crofs of the head-burgh of the jurisdiction within which the party dwells, and there denounce him rebel;' which is fufficient evidence of what was the common law of the land, though of late years this file has been abridged, and no more commonly expreffed than, 'to denounce the party rebel, and to put him to the horn.'

From thefe confiderations it appearing, that denunciation at the market-crofs of the fhire is the regular denunciation, it was inferred, that this denunciation muft be underftood in the act 1621, and not denunciation at the market-crofs of Edinburgh; an innovation which has probably been introduced by the Court of Seffion, in order to facilitate captions.

'Found, That a denunciation at the market-crofs of Edinburgh againft a perfon not living within the jurisdiction, has not the effect in law to make a fum bear intereft.'

Fol. Dic. v. 3. p. 28. Rem. Dec. v. 2. No 43. p. 70.

* * * The fame cafe is thus reported by C. Home :

UPON the 16th of December 1714, Jofeph Vanfe, merchant in Ayr, and Colonel Vanfe, as cautioner, granted bond, conjunctly and feverally, for 500 merks to Janet Crawford.

Upon the 9th of December 1721, the cautioner was charged with horning upon this bond, perfonally apprehended, and was denounced in April 1722, at market crofs of Edinburgh.

The principal debtor in the bond having become infolvent, the purfuer, who had acquired a right thereto, brought a procefs on the paffive titles againft the Representatives of Colonel Vanfe, the cautioner. And the defence *pleaded* was, That the cautionary obligement was at an end by lapfe of the feven years. To obviate this, the purfuer produced the letters of horning, with the charge thereupon given, both within the feven years; and *infifted*, that, in virtue of the laft

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clause of the statute, this diligence preserved entire whatever fell due within the seven years: From which it was *pleaded*, That there could be no dispute of the principal sum, after the above charge of horning; and as for annualrent, though the same could not be due by stipulation, the cautionary obligation being at an end by the lapse of seven years, it was nevertheless due in consequence of the denunciation which followed upon the said charge of horning.

Objected for the defenders, That the denunciation was at the market cross of Edinburgh, and not at the market cross of the shire where the cautioner dwelt; and therefore could not have the effect to make the sum bear annualrent.

Answered: That the denunciation at the market cross of Edinburgh is sufficient to all legal effects, except that of escheat singly; that, in particular, it is sufficient for a caption, which deprives a man of his natural liberty, and therefore to be considered as one of the greatest pains of law; *multo magis* ought it to be sufficient for making the sum bear annualrent, which is not so much as a penalty, being only given *nomine damni* for the creditor's wanting the use of his money.

THE LORDS found, That a denunciation at the market cross of Edinburgh, against a person not living at the time within that particular jurisdiction, has not the effect in law to make a sum bear annualrent.

C. Home, No 243. p. 394.

1747. November 17. WATSON *against* RAMSAY.

No 29.

THE LORDS found, That denunciation against a person out of the kingdom, being only at the market cross of Edinburgh, and not also at the pier and shore of Leith, did not make the sum to bear annualrent.

Fol. Dic. v. 3. p. 28. Kilkerran, (ANNUALRENT.) No 2. p. 29.

* * * See the same case, D. Falconer, v. I. p. 295. *voce* LEGAL DILIGENCE.

No 30.

A charge and denunciation having past upon a decree, which was thereafter suspended and restricted to a less sum; annualrent was, notwithstanding, found due on the restricted sum, denunciation having passed.

1663. January 30. RIG of Carberry *against* His CREDITORS.

THE creditors of Carberry having obtained a decret against Carberry, and denounced him thereupon, pursue for annualrent since the denunciation, conform to the act of Parliament thereanent.—The defender *alleged* absolvitor; *first*, because the horning was manifestly null, he being denounced in the name of Richard the usurper, after he was out of his pretended authority. *2do*, Because the decret being suspended, a fifth or sixth part thereof was taken away. *3tio*, The denunciation was not at the cross of the regality of Muffelburgh, where he dwells, but at Edinburgh. *4to*, Before the denunciation he had given in a bill of suspension, whereupon there was a deliverance given, superceding execution, till the bill were seen and answered; in the mean time these pursuers getting the bill to