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pier and shore of Leith. The publication at the market-cross of Ayr, in the present case, was merely used *ob majorem cautelam*. If publication at the market-crosses of the head burghs of every shire where the lands lie, were required, no inhibition could be depended upon, with respect to the debtor's subsequent acquisitions, unless it were published at the market-cross of the head-burgh of every county in Scotland; Stair, IV. 50. 10.; Macdowall, I. 7. 136.; Erskine, II. 11. 6.

THE COURT, upon the ground stated for Mrs Ross, 'Repelled the objection.'

Lord Ordinary, Swinton. Act. Rolland, Swinton. Alt. Wight. Clerk, Sinclair.  
Fol. Dic. v. 3. p. 187. Fac. Col. No 21. p. 43.

## S E C T. V.

Denunciation of Comprising.—Denunciation upon Horning.—  
Relaxation.

1561. June 19. LAIRD OF BLANERNE *against* LAIRD OF RESTALRIG.

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A comprising was found null, because the lands lying within a regality, the denunciation was made, not at the head burgh thereof, but at the head burgh of the shire.

THE denunciation of landis to be comprisit sould be maid at the ground of the samin, and at the mercat cros of the principal burgh of the schirefdome or schirefdomis quhair the landis lysis.

1562. January 27. LORD SEYTON *against* EARL OF MONTEITH.

BUT gif the landis lysis within ony regality, the denunciation thair of aucht and sould be maid at the ground of the saidis landis, and als wa at the principal and heid town of the said regality; uther wayis, gif the landis lyand within the regalitie be denuncit at the mercat cros of the heid burgh of the said schirefdome, the denunciation, comprising, and all that followis thair upon is of nane avail, and may be reducit.

Fol. Dic. v. 1. p. 262. Balfour, (COMPRISING.) No 1. p. 401.

\* \* \* See Act 268th, Parliament 1597.

No 58.

A party put to the horn, must be de-

1583. June. EARL OF ANGUS *against* The DONATAR of his ESCHEAT.

THE Earl of Angus persewit for reduction of the gift of his escheat, disponit in sundrie portions to sundrie persons. The second reason of the summons was,

that the gift and disposition of his escheat was made and disponit before the time or he was lawfullie put and denunciit to the horn, and against the tenour of the act of Parliament made be James Earl of Murray; and also that he was not denunciit lawfullie and orderlie, in so far as he was not denunciit at the heid burgh of the shyre where he dwelt, after the manner of the act of Parliament made in *anno* 1579, cap. 75. 'anent the punishment of persons that contempt-ouslie remain at the King's horn,' that relaxations and denunciations of hornings sould be made at the heid burgh of the shyre where the partie dwells. And also it was reasonit be the advocate, that the act of adjournal buir that the said Earl sould be denunciit at the croce of Edinburgh, and uther places neidfull; and thir words, ' uther places neidfull,' were put *copulative, et debent aliquid operari*; and so he behovit to have been denunciit not onlie at the mercat croce of Edinburgh, but also at uther places neidfull, whilk was the head burgh of the shyre where he dwelt and had his residence at that time. To all this was *answerit peremptorie*, That they offerit them to prove that it was and has been ane custom inviolablie observed be the space of 100 years, and sundrie and diverse sentences given thereupon, and sundrie and diverse hornings containeid into the register of the same tenor; and of the law, *inveterata consuetudo est vice legis*, that the partie has been put to the horn, and denunciit rebel at the place where the compearance sould be, and specially that be the foresaid space, that parties being summoned to compeir at Edinburgh to underly the law, and them not compeiring, have been denunciit rebels, and put to the horn at the croce of Edinburgh, and no uther place, and this to have been observit dayly to this present.—THE LORDS, after long reasoning, pronuncit be interlocutor, That the reason of the summons was relevant, notwithstanding of the exception whilk was appearandlie to be verie particular. THE LORDS were movit be the act of Parliament before rehearst, and *leges predict., de quibus consuetudo habet locum quando non est lex scriptum*.

*Fol. Dic. v. 1. p. 261. Colvil, MS. p. 366.*

1626. June.

STIRLING against ABERNETHY.

HORNING against a person dwelling in a regality, is sufficient, if he be denounced at the head burgh of the shire, except the defender would allege, that there is a head burgh of regality and a clerk resident with a register, who was in use to registrate hornings before the time contraverted.

*Fol. Dic. v. 1. p. 261. Spottiswood, (HORNING.) p. 146.*

1672. January 11.

JAMES SCOTT against BOYD of Temple.

MR JAMES SCOTT being donatar to the liferent of escheat of Boyd of Temple, did pursue a general declarator upon the gift.—It was *alleged*, That the horn-

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nounced at the head burgh of the shire where he resides, otherwise the denunciation is null, and this notwithstanding of 100 years uninterrupted custom to the contrary.

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Found as in No 59.