No 23.

the same nullity being in this same process proponed by way of exception, and found not to be admissable in this place by way of exception, but reserved by way of action, the party ought not to be prejudged, to insist thereon in an ordinary pursuit; albeit the pursuer *contended*, that the said improbation should either also be reserved by way of action, and not proponed in this place; or else, if the defender would propone the same here by way of exception, that thereby he did prejudge himself, and could not thereafter return to pursue upon the nullity thereof; which was repelled. This decision was stopped, and the cause ordained to be heard over again, and the same being reasoned, July ult. 1628, the nullity foresaid was received by way of exception, and admitted to the excipient's probation.

The like done in a declarator, Mr Alexander Burnet *contra* Lady Bonitoun, of her liferent escheat, March 10. 1637, where she first proponing a nullity againg the horning, viz. that she dwelt within another sheriffdom, than at the head burgh, whereof by the horning she was denounced, which was repelled *hoc loco*, and reserved to her to reduce thereupon; and, she thereafter proponing improbation, the LORDS found this allegeance of improbation should not prejudge her, to pursue reduction, upon the ground of nullity, which was proponed by her, and was found not admissable, in this place, by way of exception against his pursuit. *See* PROCESS—EXECUTION.

Act. *Advocatus Hope & Nicolson.* Alt. *Stuart.* Clerk, *Gibson.*

Fol. Dic. v. 1. p. 172. Durie, p. 393.

No 24.
An exception against a wowan's bond, that it was granted in her widowhood, but after proclamation of her banns with a second husband, was found relevant, and received summarily, without necessity of reduction.

1633. *January* 29. SCOT *against* BROWN.

IN a pursuit against one Scot and her Husband for his interest, for payment of L. 100 contained in a bond, given by her in her widowhood; the husband *allegiug* the bond to be null, because it was given by this defender, now his wife, (albeit then a widow) yet it was granted after her banns of marriage with this defender the second husband were proclaimed publicly in the parish church, and marriage was compleated after the said proclamations were ended immediately, so that she could do no deed after that proclamation which might oblige her husband. This allegeance was found relevant, and received summarily against the bond, without necessity of reduction. *See* HUSBAND and WIFE.

Act. ——. Alt. *Burnet.*

Fol. Dic. v. 1. p. 174. Durie, p. 665.

No 25.
A preferable creditor, though cited, neglecting to

1670. *February* 1. JAMES WATSON *against* AGNES SIMSON.

AGNES SIMSON being infeft by umquhile Alexander Stewart, her husband, in liferent in an annualrent of L. 40 yearly out of the lands of Lamellethem, she,

No 25.
appear in a multiplepoinding, another creditor obtained decree of preference. The preferable creditor raised a second suspension in the names of tenants. The Lords found, that it was not competent for him to quarrel the decree in this shape, but that he must necessarily insist in a reduction, according to act of Parliament 1584, c. 3.

in *anno* 1657, obtained a decreet of poinding of the ground, and the tenants having suspended on multiplepoinding, calling her, and James Watson, and others, wherein she is preferred in *anno* 1666, to her annualrent, for all years bygone and in time coming; in which decreet of multiplepoinding, Watson was absent. Watson making use of the names of the tenants, does raise a second suspension, *anno* 1668, wherein he is called on the one part, and the said Agnes Simson on the other part; which now coming to be discussed, it was *alleged* for the said James Watson, That the decreet of multiplepoinding against him, being in absence, he ought now to be heard upon his right, which is a public infeftment, long before the liferenter's base infeftment, or before it was clad with possession.—It was *answered*, That by the express act of Parliament anent double poindings, it is declared, that where parties are called, and compear not, but intent reduction of the decreet, that they shall never be heard against the decreet, or what the obtainers thereof have uplifted, unless they shew a sufficient cause of their absence; and that the obtainer of the decreet shall only be obliged to answer the other party in the second instance, according to the right which is then competent in his person, and the obtainer of the decreet shall have undoubted right to the mails and duties, ay and while he be warned at the instance of the other party, and better right shown, as is clear by the act of Parliament 1584, cap. 3.; so that Watson having yet raised no reduction of the decreet of multiplepoinding, preferring Simson, but only a second suspension in name of the tenants who suspended before, the said Agnes Simson, her decreet standing, and her right standing thereby, cannot be taken away, till in a reduction Watson produce a better right.—It was *answered*, That Watson does not contend for the years lifted by Simson, or for any years prior to his second suspension, albeit he does produce an unquestionable right, that would exclude her from all five, yet in regard of the act of Parliament, he is satisfied she be preferred for all years, till he in his second suspension produce his right; but alleges that he needs not raise reduction, because the act of Parliament does not require the same, but any complaint or process is thereby sufficient; neither does the ordinary course of law require a reduction of a decreet in absence, but a suspension alone is sufficient; and if he be put to a reduction, his unquestionable right will be excluded for all years bygone, and ay and while he raise his reduction and produce his right.—It was *answered*, That albeit the ordinary course requires not reduction of decreets in absence, yet the act of Parliament requires the same, because in the narrative it expressly mentions, that the party absent in the double poinding uses to raise reduction; and in the statutory part it mentions, that the other party's complaint shall be heard in the second instance, which is always understood to be reduction or declarator, and in a second suspension.

THE LORDS found, That reduction was necessary to take away a decreet of multiplepoinding in absence, and that a second suspension was not sufficient,

No 25. and therefore preferred Simson, and found the letters orderly proceeded; but prejudice to Watson to raise his reduction for the duties in time coming.

Fol. Dic. v. 1. p. 171. Stair, v. 1. p. 665.

SECT. VI.

Objections to Hornings, whether proponable by Exception.

No 26.
Found, that a horning cannot be taken away by exception.

1583. *July.* LOGAN *against* CARLILE.

THERE was ane Logan, who, having obtained the gift of the escheit of George Douglas of the Parkhead, pursued Michael Carlile for intromission with certain teinds pertaining to the said George.—It was *alleged* be the defendar, That the horning whairupon the gift proceeded was null in the self, because it was execute, and he denounced rebel at the market cross of Edinburgh and Lannerig; and truth it was, that he dwelt in the mean time in Kirthoril, and the said towns were not the head burghs of the shires whair he dwelt in the mean time, and swa conform to the last practice betwixt Angus and Home, *voce* EXECUTION, the said horning was null in the self; and that he offered him to prove conform to his allegeance, that he dwelt in the mean time in Kirthoril.—To this was *answered*, That he could not now be heard to oppone his allegeance, be way of exception; but the said horning ought to stand still quhill it were reduced *via actionis*, for otherways he would offer him to prove with the exception.——THE LORDS fand be interlocutor, That the horning could not be tane away be way of exception; *licet nonulli dominorum in contraria fuerunt opinione*, that it was *nullitas juris* and might, conform to the act of Parliament, be tane away be way of exception.

Fol. Dic. v. 1. p. 171. Colvill, MS. p. 236.

No 27.
Found as above.

1590. *March.*
COMMENDATOR of KILWINNING *against* LAIRD of BLAIR.

THE Commendator of Kilwinning being put to the horn be the Laird of Blair, his grand-father, the gift of his escheat for being year and day at the horn, was taken to his own son; and upon the said gift they pursued for a declarator. Gavin Hamilton of Raplock having also obtained a gift of the Commendator's escheat and liferent, for being year and day at the horn, for some other cause,