that this obligement shall only remain till they be of such age as they can rationally provide for themselves. With which explication, the decision is most just and most agreeable to natural equity. See Monsieur Servin's *plaidoiez*, last part, page 181; where, a father not found obliged to keep his bastard daughter, though it be recommended to him. *Quæritur*, if in our law a brother be obliged to aliment his bastard brother. *Sed puto quod non*, with Craig, *Feudorum p.* 265. *Vide L.* 4. *D. ubi pupillus educari debeat; L.* 1, *p.* 2, *D. de tutela et rationibus, &c.; L.* 73, *in fine, D. de jure dotium; L.* 20. *D. soluto matrimonio; L.* 13, *p. ult. D. de administratione tutorum, ibique Glossam et D D. Vide* Fabrum, *tractatu de alimentis, p.* 29; Stair's system *titulo* 5, *No.* 10.

Advocates' MS. No. 250, *folio* 112.

1671. *November* 11. MATHY *against* ——

ONE being pursued to pay annualrent for a sum since his denunciation, it was ALLEGED *absolvitor* from annualrent, because he was denounced not at the market cross of the head burgh of the shire where he then dwelt, *viz.* Glasgow, but at the market cross of Edinburgh, within which sheriffdom he dwelt never: upon which denunciation, no annualrent can be due; because the Lords after a most contentious debate betwixt *Dicksone* and *Hutchesone in anno* 1664, found, where a man was not denounced within the sheriffdom where he dwelt, that on such a horning neither his escheat should fall, nor annualrent be due; but the only effects thereof should be caption and debarring him *ab agendo et defendendo:* yea, the common law would teach a man so much, though we had no practique for it. Escheat is the punishment of contempt and contumacy; now a man cannot be made *contumax* by a denunciation made at another place than where he lives, since it is not probable it can ever come to his knowledge.

This was found relevant. *Vide supra No.* 243, [10*th November* 1671, *Fraser of Middelty;*] *and infra No.* 304, [18*th January* 1672, *Ramsay* against *Renton;*] *and* 463, § 3, [*February* 1676.]

Advocates' MS. No. 251, *folio* 112.

1671. *November* 11.

IT was OBJECTED against a declarator of escheat, It was not tabled. ANSWERED, 1*mo*, It needed not, since the rebel held no lands of the king. 2do, If he did, then his majesty's advocate's servant concurred for his majesty's interest.

2*do*,—It was objected that the horning whereupon the escheat was sought, is null, in so far as he is not denounced at the market cross of the Regality within which he then dwelt, and the lands lie. ANSWERED, This being a general decla-

rator * only, it was not the proper place for proponing any defences to stop the same; but they behoved all to be reserved to the special. REPLIED, If it were a partial exception, then he had some reason to plead it were incompetent *hoc ordine;* but for a total defence that takes away the whole libel, the same may very well be objected against the general declarator. The Lords found it might come in *hoc loco.*

Then ALLEGED, That the horning could never be taken away summarily by way of exception, unless they were in an ordinary action for reducing thereof; seeing this pretended nullity was only *nullitas facti non juris,* and so behoved to abide trial and probation; *viz.* that he lived then within that shire and regality; which trial cannot be taken here, but in a process apart. This the Lords found relevant, and therefore declared; reserving reduction of the horning as accords. *See Dury,* 19*th March* 1678, *Lamb; infra No.* 423, [11*th November* 1673, *Home* against *Craw.*]

Then it was OBJECTED, That the horning is yet null; and that by such an intrinsic nullity as verifies itself, needs no probation, and so must be received summarily in this process without any reduction: *viz.* it is not registrate within fifteen days, conform to the act of Parliament. That hornings ought to be registrate within the foresaid space, is proven by the law; that this is not so registrate, appears by ocular inspection, and needs no other trial; hence necessarily follows the conclusion that this horning is null. *Vide act* 75, *Parliament* 1579. The Lords found this nullity receivable by way of exception.

Then it was ANSWERED, The act of Parliament requires only fifteen free days, neither accounting the day of the denunciation, nor that of the registration; conform to which rule this horning is duly registrate, seeing it is registrate on the sixteenth day after the denunciation.

The Lords sustained the registration as lawful. *Vide* Hadington, 3 *December* 1611, *Lord Torphichen* contra *Earl of Mar;* see act 42, in 1555, and the many laws there cited.

Advocates' MS. No. 252, *folio* 112.

1671. *November* 10, and 14. FRANCIS HEPBURNE of Beinston *against* CONGILTON of that Ilk.

Nov. 10. Beinston having married a daughter of Congilton's, by contract of marriage Congilton was obliged to pay 5000 merks in name of tocher with his daughter. There is a pursuit raised at the instance of Beinston against this Congilton, as heir to his father, and on the other passive titles, for payment of the sum with the annualrent thereof since the term of payment, with the penalty incurred by him because of his failyie. It was DEMANDED first which of the passive titles they insisted on. They offered to prove he was heir served.

Then they ALLEGED absolvitor from annualrents, because they being only due *ex pacto* or *lege* as after denunciation upon a horning, there was none of these

* Exceptions not against the executions of the summons and the legality of the hornings, can only be objected against a general declarator of escheat.