

1676. *February.* The MARQUIS of ATHOLL *against* ———

THE Marquis of Atholl, as donatar to the escheat of _____, pursues a declarator thereof. ALLEGED,—That the execution of horning was null, wanting both the date and place where the charge was given. ANSWERED,—They offered to abide at the charge as truly given: and for the defects, they would take up their execution, and amend and supply it both as to date and place; on which they condescended. *2do*, ALLEGED,—That the party is denounced at the wrong market-cross, viz. the regality, whereas he lived within the sheriffdom.

ANSWERED,—He behoved to reduce upon that head.

REPLIED,—They needed no reduction, because it was a nullity introduced by statute, and, *nullitas juris*, it was receivable by way of exception; acts 264 et seq. in 1597; and this is Hope's opinion in his lesser Compend. See Hope's Compend. cap. 12, anent Removings, *pag. miki 54 et 55.*

DUPLIED,—It was a nullity truly consisted *in facto*, and abode probation, and therefore could not summarily be discussed *hoc loco*; and as for Hope, though a great lawyer, and to whose pains we are much obliged, yet all he has written is not canonic. *Vide supra*, 252, (11th November, 1671,) and No. 423, (Home *against* Crow, 11th November, 1673.)

The Lords declared in favours of the pursuer, reserving to the defender his reduction as accords.

2do, The Lords do not regard the act of Parliament, but find it in desuetude, and therefore do not annul hornings, inhibitions, or other diligences now, albeit they be not executed at the market-cross of the regality within which the lands lie: both in regard that formality has fallen in a general disuse; and, *2do*, because sundry regalities have no market-cross to denounce at.

3tio, Where a man dwells in a different shire from that wherein his lands lie, and he be denounced at the market-cross of that shire where he dwells, though not at the market-cross where the lands lie, and he abide year and day at the horn, his liferent escheat will fall. (*Supra*, 11th November 1671, No. 251.) In which point I found some lawyers in a mistake, because some denunciations are no ground of escheat, but only to found a caption; but these are when one is denounced, *ex. gratia*, at the market-cross of Edinburgh, within which sheriffdom he neither dwelt at the time, nor had any lands lying. See more of this at length in other papers beside me. Yet see *23d March*, 1630, Oliphant contra Earl of Marshall.

Advocates' MS. No. 463, folio 239.

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ANENT APPRISINGS.

I HEARD it questioned, if the first apprising can redeem the second and pay it, as the second appriser can redeem the first. *Videtur quod sic*: for the first compriser has all the right was standing in the debtor's person; *ergo*, he may purge and redeem as the debtor might have done. But it seems more consonant to the