1628. *July* 11. DUNBAR *against* M'KIE. No 6.

IN a declarator of simple escheat pursued by one Dunbar against M'Kie, *alleged*, That the horning whereupon the declarator was craved, having proceeded upon a charge given to M'Kie (Provost of Wigton for the time) to apprehend a rebel, the donatar ought to produce the first charge given to M'Kie, which was with certification if he failzied, our other letters of horning should be direct against him; and the pursuer had produced only the last charge of horning preceding the denunciation. THE LORDS repelled the allegeance, otherwise these charges being in other men's hands, it were hard for the King's donatars to get them.

Spottiswood, p. 149.

*** This case is called by Durie, Dunbar against Mudie, reported *voce* PROCESS.

1630. *March* 23. OLIPHANT *against* EARL of MARISCHAL

No 7.
A party was allowed proof of *alibi* from the place where denounced.

MR WILLIAM OLIPHANT intented a reduction of a horning used against him, upon this reason, that he was denounced at Edinburgh, he being dwelling in the mean time in Kirk-hill, within the sheriffdom of Linlithgow. *Alleged* by the Earl of Marischal his superior, and to whom his liferent belonged, and offered to prove, that he was dwelling at Edinburgh for the time. Although the Lords are ever in use to sustain such an allegeance made in fortification of an execution, yet here they preferred the pursuer in proving that he dwelt *alibi*, both in respect he condescended upon witnesses *omni exceptione majores*, all landed gentlemen and ministers; as also because he had great presumptions on his part, viz. the horning was executed in September, at which time it was not probable the pursuer could be dwelling in the town, having a great mains in labouring himself. Sicklike his wife and family were known to remain in the country the most part of the year, even in Session time, much more in vacance.

Spottiswood, p. 153.

*** Durie reports the same case:

IN a reduction of a horning, because the pursuer dwelt within another Sheriffdom, viz. Linlithgow, and so should have been denounced at the market-cross of the head burgh of that shire, whereas he is denounced at Edinburgh, within the shire where he then dwelt not, and the defender offering to prove, in fortification of the horning, that he dwelt within Edinburgh, at the market-cross whereof he was denounced, and so *alleged* that he ought to be preferred, for maintaining of the writ, it being *pro fisco*; the LORDS nevertheless repelled this excep-