

(DUE *ex pacto.*)

gear, and before year and day, marries Dr Forrester, whereby her tutory ceases; yet she continues intromissatrix for the space of three or four years after the marriage. The other two tutors obtain bond of Dr Forrester, that he shall be countable for his wife's intromissions: They charge him, conform to his bond, for the sums intromitted with by his wife, and for the annualrent.—He suspends, *alleging* he ought not to pay annualrent, because his bond bore not the same *per expressum*.—THE LORDS ordained him to be countable for the annualrents.

Fol. Dic. v. 1. p. 38. Auchinleck, MS. (TUTOR.) p. 205.

No 23.
accountable for his wife's intromissions; found liable for annualrent, though not mentioned in the bond.

ANNUALRENT due *ex mora.*

1673. February 11. SMITH *against* WAUGH.

IN a pursuit at the instance of Robert Smith against Mr John Waugh, referred to an auditor, this query was reported, whether annualrent was due after denunciation, albeit the horning was not registrate, and so was alleged to be null by the act of Parliament.

THE LORDS found, That albeit the want of registration did annul the horning as to escheat, by the old act of Parliament; yet that it was not null as to inferring annualrent by the act of Parliament 1621, bearing expressly annualrent to be due from the date of the denunciation, without any mention of registration, and annualrent being very favourable after all diligence, which is due in most nations by delay or litifcontestation, and with us is not due but by paction, even not by sentence, but only by horning and denunciation, wherein the debtor hath no reason to object against the creditor's favour, in not registering him at the horn, to make his escheat fall.

Fol. Dic. v. 1. p. 38. Stair, v. 2. p. 171.

No 24.
Denunciation makes the sum bear annualrent, though the horning be not registrate.

1665. January 26. GEORGE HUTCHISON *against* DICKSON of Lonehead.

GEORGE HUTCHISON pursues Dickson, for a sum of money, and for the annualrent since the denunciation of the horning; whereupon the defender *answered*, That the horning was only at the market cross of Edinburgh, where the defender dwelled not, and so was null, and could not give annualrent.—It was *answered*, That albeit such hornings be not sufficient for an escheat, yet they are suffici-

No 25.
A horning denounced at the market cross of Edinburgh, where the debtor dwelt not, although suffi-

(DUE *ex mora*.)

No 25.
 cient for cap-
 tion, yet not
 for annual-
 rent. Escheat
 falls not, but
 upon registra-
 tion.

ent for caption, and so are not null; and therefore annualrents having so much ground, in equity, and by the civil law, being due *ex mora*, such denunciations should be sufficient for annualrent.

THE LORDS found such hornings null, and would not allow annualrent.

Ed. Dic. v. 1. p. 38. Stair, v. 1. p. 257.

No 26.

Found in con-
 formity to the
 above deci-
 sion.

1711. July 3.

GORDON *against* GORDON.

GORDON of Daach *alleging*, That James Gordon, messenger, owed him L.67 Scots, he pursues him before the Baron Court of Huntly, and obtains a decret there: But, because this sentence could not be executed without the bounds of the Baron's jurisdiction, out of which the defender had removed, therefore he pursues him before the Sheriff, for interposing his authority thereto; and, on his decret, he raises horning, and denounces him; whereon Gordon being charged, he suspends on these reasons; *imo*, That there was nothing produced to instruct the debt, but the Sheriff's decret merely in absence; whereas the Baron's decret, as its warrant, ought likewise to be in the field, that it may appear what was the ground of the debt, and on what probation it goes.—*Answered* by the charger, I am not master of the baron-decret, for that is detained by the sheriff-clerk, and lies as his warrant: And if you desire to see, you may call for it in a reduction; but the Sheriff's decret is the immediate warrant of my charge of horning.—THE LORDS found him not obliged in this suspension to produce the Baron's rolment of Court.—Then he repeated his *second* reason of suspension, That he could not insist for the annualrent of the sum charged for since the denunciation, because it was only made at the market-cross of Edinburgh; whereas he then lived in the north. It is confessed, That such a denunciation is a good enough warrant for a caption, but cannot infer annualrent, nor make the escheat fall. It is true, the 20th act 1621, ordains annualrents to be due after denunciation, but it does not regulate where the denunciation is to be made. That seems to be set down in the 268th act, 1597, appointing hornings, inhibitions, &c. to be execute at the market-crosses of the respective jurisdictions where they dwell; which imports, that executions at Edinburgh are not legal, except either the debtor dwell there, or be out of the kingdom; and Sir G. Mackenzie, in his observations on that act 1621, seems to think so; albeit he says, he cannot see great reason for it, except that debtors in other shires cannot know exactly when they are denounced at Edinburgh.—*Answered*, That denunciation anywhere is good enough to produce annualrent; for the act 1621, introducing it, mentions nothing but denunciation; *et ubi lex non distinguit, nec nos distinguere debemus*; yea, the Lords have thought the case of the creditor's getting annualrent so favourable, that were he only denounced, and did not so much as proceed