

1672. *June 15.*

A DECLARATOR of property being called, it was ALLEGED there could be no process upon the first summons, because it was only upon six days; whereas it should have been upon twenty-one days. REPLIED,—It was privileged. DUPLICATED,—These privileges were but granted *periculo petentis*, and so could not defend.

This being taken to interlocutor, the Lords found no process upon the summons, as evil raised and executed; and for shunning the like error in time coming, they did make an act of sederunt, that all declarators should be upon twenty-one days warning. *Vide supra*, No. 199, [*Macraw* against *Lord Macdonald*, *July 5, 1671.*] See the act of sederunt now regulating this. *Vide supra*, No. 303, [*Town of Stirling* against *Unfreemen of Falkirk*, &c. *January 18, 1672*; *infra*, page 642.]

*Advocates' MS. No. 341, folio 135.*

1672. *June 20.* ANNA CARSTAIRS and SIR JOHN RAMSAY of Whythill, her Husband, *against* CARSTAIRS of Kinneuchar, her Father.

By contract of marriage between Kinneuchar, and — Ainslie, daughter to Andrew Ainslie, merchant in Edinburgh, it is provided, that if there shall be only one daughter of the marriage betwixt them, then and in that case, she shall have L.20,000, which is appointed to be payable to her at her complete age of fourteen. This Anna being the only daughter of the marriage, and being now eighteen or twenty years old, pursues her father for implement of that clause in the contract; and subsumes, that there is no possibility that any more bairns can exist of this marriage, seeing the father is furious and fatuous, and upon that account, separate from his wife, and besides, she is fifty years of age, and so past that term established both by lawyers and physicians for bearing of children; but if the Lords please, the pursuers offer to find sufficient caution that they shall make a proportional part forthcoming, if so be there happen to be any more bairns of the marriage.

To this it was ANSWERED,—That it was a very unnatural pursuit for the daughter to vex her father, rip up his infirmities, and thereby add affliction to the afflicted; that there was no natural impossibility why there might not be yet other bairns of the marriage beside her, and though they do not cohabit presently, yet they may cohabit afterwards, and his furiosity may rabate.

The Lords refused process at her instance, and superseded all action for the principal, till the decease of one of the parents; yea, they demurred whether they ought to decern for the annualrents in the mean time, or if the same should not rather be restricted to a mean aliment during the lifetime of the two parties together.

*Advocates' MS. No. 342, folio 135.*