

No 2. clear by not finding of caution for so long a space, *qua non præstita, non habuit potestatem administrandi, et quicquid gessit ipso jure nullum erat, C. De Satisd. Tut. et Cur.*; which gave the King occasion by the prerogative of his Crown to give a dative. THE LORDS remitted the matter, and ordained the brother to be served notwithstanding of the dative.

Spottiswood, (IDIOTS AND FURIOUS PERSONS.) p. 163.

1632. February 21.

ELIZABETH ALEXANDER *against* KINNEIR.

No 3.
Reduction *ex capite furoris* may proceed after the granter's recovery, upon a proof of the madness at the time of granting the deed sought to be reduced, though no inquisition of the furiosity had been taken by an assize.

IN a reduction of a disposition of a liferent made by this woman Alexander to the defender, upon this reason, because the woman the time of the making thereof, was then furious and distracted of her mind and wit, and was done without an onerous cause; the circumstances of her fury being qualified in the summons, and offered to be proved by the ministers of Dundee and doctors of medicine and apothecaries, and other honest burgesses of that town where the woman then remained; this reason so to be proved was found relevant, and sustained at the woman's own instance, who was now convalesced and recovered of that madness; albeit the defender *alleged*, That there ought to have preceded a precognition and declarator of her fury, by the determination of an assize, after trial taken, and that it ought to have been so first found by an assize before this reduction could be sustained, being of a dangerous preparative, to reduce lawful deeds upon allegiance of fury, and to be proved by witnesses, which may offer occasion to others to move the like actions, and to prove the same after that manner; which allegiance was repelled. For the LORDS found, that the party recovering, albeit no friend should seek protection of the person of the furious, nor of her goods the time that she was diseased, yet it were not just to deny that remedy to herself, which her nearest agnate or friend might have gotten of the law, if they had sought the same, and their omission could not prejudice her therein.

Act. Burnet.

Alt. Morat.

Clerk, Scot

Durie, p. 623.

No 4.
Found in conformity with the above. In this case, the granter of the writ was dead, and the reduction was pursued by her heir.

1638. July 26.

LOCH *against* DICK.

ONE Henry Nisbet, burgess in Edinburgh, being owing by bond to umquhile Sarah M'Math 3000 merks, and the said Sarah M'Math having assigned the sum to Janet M'Math, one of her sisters; and the said Janet, and William Dick her spouse, having obtained decret upon this assignation before the Sheriff, against the said Henry for payment, and James Loch burgess of Edinburgh, who had married another sister of the said umquhile Sarah; and Janet