

bore it not, although it was offered to be proved by witnesses that it was shown.

No 4.

Fol. Dic. v. 2. p. 212. Durie.

* * * This case is No 7. p. 2179. *voce* CITATION.

1628. November 7. MAXWELL against LD INNERWICK.

No 5.

FOUND a requisition null, because the procuratory was not read; and albeit the instrument was thereafter mended, and also referred to the Laird of Innerwick's oath that the procuratory was read, yet the LORDS would not sustain the requisition.

Fol. Dic. v. 2. p. 212. Kerse, MS. fol. 85.

1637. March 28. SCOT against SCOT.

ONE James Scot, son to Robert Scot of Satchels, being donatar to the escheat and liferent of the said Robert his father, Robert Scot, eldest son to the said Robert Scot elder, and brother of the said James, begotten upon a prior wife, pursues his said brother, donatar foresaid, for reducing of the horning, whereupon his father's escheat was taken, to the effect that he might have access to his father's liferent, conform to a contract, whereby he had disposed his liferent to him, and of the effect whereof he was prejudged by the said escheat, which the second son declared, he used for maintenance of his aged father, who wanted all other means whereby to live. The reason of reduction was, that the horning purported not, that six knocks were given at the rebel's dwelling-house, as in custom is requisite; and that the register of hornings, wherein this horning and executions are inserted, purported no such record of adhibiting of knocks. And the defender producing his horning, in the margin of the execution whereof were added these words, viz. (After the messenger had used six knocks at the party charged his dwelling-place,) at the verity, and truth of the doing whereof he abode, as it is now produced; for albeit he granted, that he had caused the messenger subscribe this margin since the registration, yet it was truly done; and also the words foresaid in the margin were extant so written, although then not subscribed at the time when the horning was presented to be registered, which the clerk-keeper has not inserted in the register, because it was not then subscribed; and the pursuer *replying*, That seeing it was not registered with that clause, and is confessed by the party was not then subscribed, the same therefore ought not to subsist; the LORDS sustained the horning, notwithstanding of the reason, the defender proving by the clerk-keeper of the register, and his servants, that when the horning was presented to be registered, the same had the foresaid marginal clause standing then, as if

No 6.

An execution of a horning, where the six knocks were mentioned only on the margin, was allowed to be supported by witnesses.

No 6.

now bears, and also proving by the messenger and witnesses, the truth of the act, viz that the knocks were given, as the same purports; and this was the rather done, because the LORDS found, that this reduction was pursued to the father's prejudice, whereas the defender used the gift to his father's sustentation.

Act. ———.

Aft. *Sandilands*.*Fol. Dic. v. 2. p. 213. Durie, p. 843.*

No 7.

Premonition by a procurator sustained, though it did not bear that the procuratory was shown.

1662. January 18. VEITCH against BYEL of BASSINDEN.

MR JOHN VEITCH, as assignee by John Edgar of Wedderlie to a reversion, pursues declarator against Byel of Bassinden, the wadsetter, who *alleged*, Absolvitor, because the premonition is null, being by a procurator, and not bearing the procuratory produced, neither the pursuer's assignation to the reversion. The pursuer *answered*, *Non relevat*, unless it were alleged, that they had been demanded at that time, and had not been shewn; *2do*, If need be, he offers him to prove, by the defender's oath, that the procuratory was then shown. The defender *unanswered*, The procuratory is not yet produced, and the pursuer was obliged to have shown it then, albeit not called for.

THE LORDS sustained the order, the pursuer re-producing the procuratory, and proving by the defender's oath, that the procuratory was then shown.

Fol. Dic. v. 2. p. 212. Stair, v. 1. p. 83.

* * THE LORDS refused to sustain an order of redemption to be proved by witnesses, 12th January 1677, Jaffray against Wamphray, No 19. p. 3630 *voce* ESCHEAT; and No 16. p. 8340. *voce* LITIGIOUS.

1667. November 12.

DUKE and DUTCHESS of MONMOUTH against SCOT of CLERKINGTON.

No 8.

Found, that requisition and such *actus legitimi* cannot be proved but by instruments perfected as to all necessary solemnities, at least the minutes of the same under the no-

REQUISITION being made by the Duke of Monmouth and his Lady to Sir Laurence Scot of Clerkington, for a sum of money, but the notary having deceased before his instrument of requisition was extended, and there being only a minute of the same unsubscribed, the said Duke and Dutchess pursued Clerkington for extending and making up the instrument; and craved, that Clerkington and the witnesses might be examined to that purpose; and that upon probation, that the requisition had been made conform to the said minute, an instrument under the clerk-register's hand should be equivalent to an instrument.