

\* \* \* Auchinleck reports the same case :

No 5.

SUMMONS of diligence execute against persons out of the country, at the market-cross of Edinburgh, pier and shore of Leith, upon 60 days, not sustained, because the summons bore no warrant; but the LORDS gave the party a long day to conclude his diligence.

*Auchinleck, MS. p. 220.*

1666. June 29. DOUGAL M'PHERSON *against* SIR RORY M'LAUD.

No 6.

DOUGAL M'PHERSON pursues Sir Rory M'Laud for payment of a sum upon his promise, and the summons bears a warrant to cite him at the market-cross nearest the place of his residence, being in the Isles; whereupon the pursuer craved him to be holden as confest. The defender *alleged*, That he was not personally apprehended, and so could not be holden as confest; and, that this citation at the market-cross was *periculo petentis*, and not to be sustained in the time of peace, when there was no trouble in the country.

A warrant to cite at the nearest market cross, where there is no *tutus accessus* to the party, must be granted by the Lords *in præsentia* upon a special bill.

THE LORDS found that warrants for such citations ought not to be granted by common bills of course, but only by the Lords, upon special bills *in præsentia*, but seeing the defender compeared, they allowed his procurator a long time to produce him.

*Fol. Dic. v. I. p. 258. Stair, v. I. p. 383.*

1672. June 21. FERGISSON *against* ———.

No 7.

THE LORDS found, That a party being within the country, the time of the citation upon the first summons, and some time thereafter; and, going out of the country before the second summons, could not be cited at the pier and shore of Leith upon the second summons, without a warrant in the said summons to that effect.

*Fol. Dic. v. I. p. 259. Dirleton, No 170. p. 69.*

1677. July 18. MONTEITH *against* MURRAY.

No 8.

GEORGE MONTEITH being creditor to Hector M'Kenzie, arrested in the hands of Thomas Dewar skipper, the said Hector's share of the ship called the Golden Crown, and profits thereof, which ship was disposed to the said skipper, and he

An execution at the market cross of Edinburgh and

No 8.  
 pier and shore  
 of Leith,  
 found null,  
 there being  
 no special  
 warrant in  
 the letters for  
 that effect.

gave back-bonds to his owners, whereof M'Kenzie was one: Upon this arrestment, Monteith recovered decret for making forthcoming the price and profits of the ship. John Murray, for a debt due to him, obtained assignation from M'Kenzie to the skipper's back-bond, and to his share of the ship and profits thereof, and did intimate the same at the skipper's dwelling-house, and also at the pier and shore of Leith before the arrestment. The skipper suspends on double pointing, and calls both the arrester and the assignee. It was *alleged* for the assignee, That his assignation and intimation was prior, and preferable to the arrestment. It was *answered* for the arrester, That the intimation was null, as it was done at his dwelling-house, because he was out of the country; and as at Edinburgh, and at the pier of Leith, because it was without warrant; there having been no letters of supplement obtained from the Lords, without which no intimation can be made to persons out of the country.

THE LORDS found the intimation null, and preferred the arrester, and found the ship or share thereof, arrestable as moveable.

*Stair, v. 2. p. 544.*

1699. July 11.

LERMONT *against* GORDON.

No 9.

IT being *objected*, That a messenger at delivering the copy, wanted the summons, which is the warrant thereof, and being required then by the defender's advocate to show it, the LORDS found a messenger not obliged to show his warrant to third parties not defenders, and that law presumes he had it on him, unless the contrary were proved.

*Fol. Dic. v. 1. p. 259. Fountainball.*

\* \* \* See This case, No 6. p. 3096.

1705. June 12.

COCHRAN of Preistgill and DYKES of Halburn, *against* JAMES URQUHART  
 of Knockleith.

No 10.

A person was held as confest upon a personal citation, tho' there was only a warrant for edictal citation, because a warrant for edictal citation

IN the action at the instance of Cochran of Preistgill, and Dykes of Halburn, against James Urquhart of Knockleith, as donatar to the forfeiture of Halburn, for repetition of a sum paid to him as a composition for transmitting the gift of forfeiture to Preistgill, with annualrent from the Parliament 1690, the pursuers *contended*, That the disposition of the gift bearing for onerous causes in general, infers that the donatar received near to the value of the lands, and Halburn's oath should be taken on the composition.