

No 37.
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 they dwelt in
 the jurisdic-
 tion where
 the lands lay.

cross of the head burgh of the regality, or the stewartry, within the which the lands lay, which were desired to be poinded ; so that the citation of the minor, and of his tutors and curators, generally used at the market-cross of the head burgh of the Sheriffdom within the which the minor dwelt, was sustained, seeing the minor dwelt not then within the regality. See No 41. p. 3709.

Act. *Lermonth.*

Alt. *Aiton.*

Fol. Dic. v. 1. p. 260. Durie, p. 181.

1675. February 5.

A. against B.

No 38.

THE LORDS found, That a warrant could not be given to cite at the market cross, with certification *pro confesso* ; seeing no person could be holden as confess who was not personally apprehended.

Clerk, *Hay.*

Dirleton, No 243. p. 117.

1697. July 7.

COCKBURN against ROBERTSON.

No 39.

A facile person being carried out of the way, to prevent personal citation, edictal citation was admitted in a process of interdiction.

THERE is a bill given in by Mr Hary Cockburn, late Provost of Haddington, and others, representing that William Cockburn his son, is a youth within two or three months of majority, and of that facility and prodigality, that, for a little present money, he is ready to renounce his interest in a large succession he falls to Provost Sleich in Haddington, his grandfather, and has been often imposed upon by Mr John Robertson, who has married the other heir portioner, to grant disclamations of the processes intended by him for recovery of his just rights ; and now they have spirited him away, so it is not known where he is, and will cause him abscond till his minority expire, and then take a disposition from him to all, for some small thing ; and therefore craved, seeing they were to execute a summons against him, to get him interdicted *causa cognita*, and knew not where to cite him ; that the Lords would allow the same to be done at his master's house, where he was bound apprentice in Edinburgh, and at the market cross of Haddington, where his lands lie.—THE LORDS, considering this to be an extraordinary case, and some documents of his levity being produced, they allowed an edictal citation ; as also appointed Mr John Robertson to be cited, and referred to the Ordinary on the bills to try the matter of fact. THE LORDS have several times *ex proprio motu* interdicted lavish persons ; whereof we have an eminent instance. 17th February 1681, Robertson *contra* Gray ; *voce* INTERDICTION ; and by the Roman law, Prætors gave curators to prodigals,

and they had a very pretty formula of interdiction of such delapidators, *qui nec finem nec modum impensarum habent.*

No 39.

Fol. Dic. v. 1. p. 260. Fountainball, v. 1. p. 783.

1705. June 12. COCHRAN against UROUHART.

A PARTY having industriously absconded, the LORDS granted a diligence to cite him edictally.

No 40.

Fol. Dic. v. 1. p. 260. Forbes.

*** See This case, No 10. p. 3686.

1710. July 29.

JAMES FAIRHOLM, Merchant in Edinburgh, against KENNETH M'KENZIE of Assint.

No 41.

PROCESS was sustained upon a summons at the instance of James Fairholm, against Kenneth M'Kenzie, as representing Mr John M'Kenzie of Assint, his father, for payment of 1000 merks, with annualrent and penalty; for which Mr John stood engaged to the pursuer, as cautioner for the Lord Duffus; albeit the defender was minor, and Mr Alexander M'Kenzie Colonel in his Majesty's foot-guards, his sole tutor, was in Spain, and not cited upon 60 and 15 days, as one out of the kingdom; nor yet edictally at the market cross of Dornock in Sutherland, where the minor's lands lay; and the summons was enrolled only against Kenneth M'Kenzie, though his tutors were concluded against in the libel; in respect Kenneth M'Kenzie was personally cited in Dr M'Kenzie's house at Fortrose, where he resided at school; and his tutors and curators in general, were cited edictally at the market cross of the head burgh where the minor dwells; and it was needless to enroll against tutors, who are only called edictally *pro interesse*, and not concluded against in the libel *nominatim*, but only as tutors in general *ex stilo*.

Found in conformity with No 37. P. 3707.

Fol. Dic. v. 1. p. 260. Forbes, p. 438.

1715. December 2. ASHURT, and his FACTOR, Supplicants.

ASHURT, and his Factor, having offered a petition to the Lords, showing, that he had raised horning, containing arrestment, against one Congalton his debtor; which Congalton is engaged in the present rebellion, as are also several of his debtors, at the least, severals of the said debtors have their residence be-north Forth, in the shires which are now in the power of the rebels, to which there

No 42.

Arrestments and citations on furthcoming, allowed to be executed at the market cross of Edinburgh.