

No 129. merchant in Edinburgh, the LORDS sustained a decret of transumpt of a bond proceeding upon citation against the debtor, to satisfy the production, albeit the citation was only given at the market-cross of Edinbrgh, pier and shore of Leith, the debtor having his residence out of the country.

Sir P. Home, MS. v. 3.

1702. July 7. SIR ROBERT HOME *against* SIR PATRICK HOME.

No 130.

In an impro-
bation of a
decret of the
Court of Ses-
sion, the de-
fender must
produce the
warrants, and
it is not suf-
ficient to say
they are in
public custo-
dy.

SIR Robert Home of Renton, pursuing a reduction and improbation against Sir Patrick Home, Advocate, and Home of Kames, of a decret they had obtained against his father; and the decret itself being produced, but certification craved against the grounds and warrants of it, the question arose, Who ought to be burdened with the production of these? It was *contended*, The pursuer ought to search for them, and either produce them, or else produce a testificate from the clerks that they were not to be found among the records. On the other hand, it was *alleged*, That the defender being obliged to support his own decret, he was more concerned to search for them than the pursuer, for his decret would fall if they were amissing, and the pursuer would not then be anxious to recover them, but rather have out his certification against them; and therefore it was the defender's interest rather to take a diligence for seeking the warrants of his own decret. And accordingly the LORDS, in this case, burdened the defender with production of them, and granted him a diligence for recovery of the same. See Stair, Instit. lib. 4. tit 20. § 21. where he mentions the production, but does not tell by whom they should be produced, save that of writs registrate in the books of inferior courts, he thinks the defender ought to be burdened with the producing them. But that case differs from this in hand, of the grounds and warrants of a decret of session; and it seems more equitable that he be at the expense of extracting the diligence, and the trouble of searching, rather than the pursuer.

Fol. Dic. v. 1. p. 448. Fountainball, v. 2. p. 153.

1704. December 28. WILLIAM WILSON *against* LORD SALINE.

No 131.

The defender
in an impro-
bation pro-
duced an ex-
tract of a
deed under
the hand of
the Lord Re-
gister. Certi-
fication was
granted, be-

WILSON, as an appriser of some lands from Alexander Short in Stirling, pursues a reduction and improbation of a disposition of these lands made by Short to Lord Saline, dated in 1662, and registrate the year thereafter; and a condescendence being given in of the date of its registration, search is made for the same amongst the warrants in the lower Parliament house; and not being found, nor any vestige of it in either minute-book, register, *licet* book, or other record, the Lord Register gives a declaration, that, after a most diligent scrutiny