

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.

Answered for the defender, Heritors buying back their own forfeited lands, or friends for their behoof, always get an easy bargain; and, what was given, must be proven by the donatar's oath who received it, since the writs bear not the particular sum.

No 10.
includes a
personal cita-
tion.

THE LORDS found the pursuers behoved to prove by Knockleith's oath, the quantity of the sum given for the composition.

Upon this the pursuer *craved*, That Knockleith might be holden as confest, although not personally apprehended; since it appeared from the execution, that he had industriously absconded.

THE LORDS granted a diligence to cite him edictally at the market-cross of the head burgh of the shire, and at the parish church door.

A messenger finding him accidentally, gave him a copy by virtue of this warrant, as personally apprehended; upon which, the pursuers craved he might then be holden as confest.

Answered, That could not be, since there was no warrant for a personal, but only for an edictal citation.

Replied, That a personal citation includes the edictal, as being something more, and a better certioration; the warrant for an edictal citation having proceeded allenary on a supposition of the parties lurking and keeping out of the way, so as he could not be apprehended personally.

THE LORDS held him as confest; but declared, That if he came in to depone betwixt and a certain day, he should be received.

Fol. Dic. v. 1. p. 258. Forbes, p. 1.

1714. December 9.

GEORGE WATSON *against* JOHN MONRO.

THERE being a competition betwixt George Watson, a creditor to Sir Robert Forbes and John Monro, donatar to his escheat, about a sum due to the said Sir Robert; George Watson craves to be preferred, because he has an assignation duly intimate to the debtors by letters of supplement at the market-cross of Edinburgh, pier and shore of Leith, prior to the denunciation and declarator.

It was *alleged* for the donatar; That the intimation was null, because the execution did not bear production of the assignation intimate, but only, in general, that intimation was made by virtue of, and conform to, the letters of supplement in all points.

THE LORDS having remitted to the Ordinary to inquire, if, by the custom, executions of letters of intimation are in use to express production of the assignation, and to report;

For clearing this point, there is produced a declaration, signed by a great many notaries and messengers of good reputation and experience, declaring,

No 11.
Execution of
letters of in-
timation at
the market-
cross of Edin-
burgh, and
pier and shore
of Leith, not
bearing pro-
duction of
the assigna-
tion intima-
ted, found
null.