

*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.

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 10.

includes a personal citation.

No 11.

Execution of letters of intimation at the market-cross of Edinburgh, and pier and shore of Leith, not bearing production of the assignation intimated, found null.

No 11.

that, by the constant practice, executions do bear production of the assignation intimated; and thereupon it was *alleged*, that the execution of Watson's intimation was null.

It was *answered* for Watson; There is little regard to be had to impetrated declarations of that sort; but the matter ought to be determined, with regard to the importance of these letters of intimation, which of themselves are sufficient; because they proceed upon a bill to the Lords, which bill bears production of the assignation, and the deliverance runs in these terms, '*Fiat ut petitur*, because the Lords have seen the assignation;' and letters passing the Signet on that bill, there is no further need of a second production of the assignation at the market-cross and pier and shore, which would be but an empty formality.

It was *replied*; That bills for letters of intimation pass, of course, *periculo petentis*; and the Lords are not in use to consider the instructions; neither are the clerks of the bills very careful to see that these instructions are really produced. *2do*, The only use of letters of intimation is, in regard that the party having no residence within Scotland, there can be no intimation made personally, or at the party's dwelling-house; and the letters are only to supply the want of a domicile, that the market-cross and pier and shore shall be reckoned equal to an intimation personally, or at a dwelling-house; so that all other formalities requisite in intimations to parties in Scotland, are to be observed in the execution of letters of intimation, both in reason and by practice.

THE LORDS found the execution of the intimation, not bearing the production of the assignation, null.

*Fol. Dic. v. I. p. 259. Dalrymple, No 125. p. 174.*

\*\*\* See This case by Bruce, *voce* INTIMATION.

1724. July 15.

Colonel ROBERT MONRO of Foulis, *against* JOHN TOUCH of Logiereich.

No 12.  
It was objected to an adjudication, that tho' the superiors were named in the *against* of the decret, yet there was no conclusion in the libel *against* them for infesting the adjudger; and therefore the horning *against* them was without warrant, and consequently the charter

COLONEL MONRO having adjudged certain lands belonging to the deceased Alexander Baine from Mr Daniel Baine his son, as charged to enter heir to him, *insisted* in a reduction of an adjudication in the person of the defender, upon this ground, That the sums in it were satisfied and paid by his and his author's intromissions; and, in order to keep the legal open, the following nullities were *objected*; *imo*, That it appeared from the decret that the summons was not called by the clerk, in order to its being enrolled; for, though it bore, that the parties were often called by a macer, yet that could only be understood of the calling before the Ordinary. *2do*, That though the superiors were named in the *against* of the decret, yet there was no conclusion in the libel *against* them for infesting the adjudger; and therefore, the raising horning *against* them was without any warrant, and consequently the charter, bearing to be in obedience