

ed to be a ground of caption, when no escheat or other penal casualty follows upon it.

No 42.

THE LORDS allowed arrestment and citation on furthcomings to proceed as desired; the petitioner first condescending upon the persons in whose hands he desired the arrestments to be laid, that the Lords might be satisfied, by sufficient documents or their proper knowledge, that these persons did reside in shires, to which there was not *tutus accessus*.' .

Fol. Dic. v. I. p. 260. Dalrymple, No 152. p. 211.

1724. *January 22.* CREDITORS OF SIR JOHN HOUSTON *against* The HEIR.

No 43.

THOUGH in a process against a minor, his tutors and curators must be cited at the head burgh of the shire, it is otherwise in legal diligences, which must be executed at the head burgh of the regality; and therefore, a general charge executed against the minor personally, and against his tutors and curators at the head burgh of the regality where he dwelt, was sustained.

Fol. Dic. v. I. p. 260. Edgar.

. See This case, No 23. p. 3697.

S E C T. IV.

When the party is out of the kingdom.

1611. *July 4.* LADY CARMICHAEL *against* Her SON.

No 44.

A MAN being furth of this realm, being summoned upon 60 days warning at the market cross of Edinburgh and shore and pier of Leith, it is sufficient, because it is esteemed *communis patria*, and it is not necessary to summon him at the dwelling place where his wife and bairns remain, or where he dwelt before going furth of the country.

Fol. Dic. v. I. p. 260. Haddington, MS. No 2256.

1631. *February 22.* MURRAY *against* LO. YESTER.

No 45.

In a redemption of the lands of Drumelzier, by virtue of the legal reversion competent to the Lord Drumelzier, whereto the pursuer was made assignee by

An order of redemption, used at Edin.

No 45.
burgh, was sustained, though the lands lay in another sheriffdom, the debtor being out of the country.

him from the Lord Yester, having right thereto, as is noted 12th Feb. 1631, *voce* REDEMPTION, the LORDS found, That the conclusion of the summons, craving the defender to be decerned to renounce all right and title which he had to the lands any manner of way, ought not to be sustained; and that no sentence could follow, but to decern the defender to renounce all right which he had to these lands by virtue of these rights, whereto the legal reversion, which was the only ground of this pursuit, did extend, and no further; and the LORDS did sustain the order of redemption, albeit used at Edinburgh, and the lands lay in the sheriffdom of Peebles, where the defender alleged the order ought to have been used, seeing this was a legal reversion near expired; and so if the order was not good, the comprising should expire before any other order might be used; likeas the time of the order the Lord Yester was not in the country, and Edinburgh is *communis patria*.

Act. Nicolson.

Alt. Stuart & Hay.

Clerk, Gibson.

Fol. Dic. v. 1. p. 261. Durie, p. 573.

1631. June 4.

CHRISTIE against JACK.

No 46.
A decree of apprising against a person out of the country was reduced, because the summons was not executed at the market-cross of Edinburgh, though it was executed at the pier and shore of Leith, the market-cross of the head burgh of the shire, and the cross of the town where the defender's family lived.

In a reduction of a comprising upon this reason, That the party debtor, against whom this comprising is deduced, was out of the country, and by the citation in the denunciation, albeit it be used against him, as out of the country, yet he is not lawfully cited, being only cited at the market-cross of Dundee, and Forfar, and pier and shore of Leith, whereas by common consuetude observed, all citations against parties out of the country, ought to be at the market-cross, of Edinburgh, as *communis patria*, and has been so done heretofore. This reason was found relevant, and the comprising reduced therefor, albeit the party was cited both at the pier of Leith, and at the market cross of that burgh where he dwelt with his family, viz. Dundee, and also at the market-cross of Forfar, which is the head burgh of the sheriffdom, which the defender *alleged* to be a citation, which might more probably come to his knowledge (which is the end of all citations) than if it had been done at Edinburgh; for albeit by custom, citations of parties out of the country are used at the market-cross of Edinburgh, and being so used, are lawful, yet that permissive custom will not infer any prohibitory consequence, that citations otherways used, are unlawful and null; for albeit it be lawful to do the one, yet there is nothing in law nor practice, to make the other unlawful, except it might be shewn, that there were either some warrant in law, or by sentence extant, to prohibit citations to be otherways, except at Edinburgh; likeas by warrant of the letters, the direction thereof appointed the party to be cited at Dundee, Forfar, and Leith, which he has done, and so obeying the warrant of the Lords letters, the citation conform thereto cannot be found unlawful, especially tending to annul a