

No 15. therefore it must be presumed his dwelling house was according to his designation.

THE LORDS found, That the designation was not in such a place, but of such land ; and yet they sustained the execution, upon designing the dwelling house and abiding by the same, as the true place of execution.

Fol. Dic. v. 1. p. 552. Stair, v. 2. p. 480. & 484.

1677. January 12.

The CREDITORS of the LAIRD of WAMPFRAY *against* The LAIRD of CALDERHALL and the LADY WAMPFRAY.

No 16.

An instrument of registration produced in process, being objected to, for not bearing production of the procuratory, the Lords would not allow the notary to give out another instrument, bearing that the procuratory was produced.

IN a competition betwixt the Creditors of Wamphry and Calderhall, as donatar to his escheat, competing for the sum of L. 12,000 due to him by the Earl Annandale ;—it was *alleged* for the donatar, That the sum fell under Wamphray's escheat, having been required by Wamphray.—It was *answered* for the Creditors, *imo*, That albeit requisition had been fully made, the sum bears annualrent, and therefore is not moveable *quoad fiscum et relictam* by the act of Parliament 1661 ; *2do*, There was an instrument of requisition judicially produced, which was null, not bearing a production of a procuratory.—It was *replied* to the *first*, The act of Parliament is opposed, by which the fisk and relict are in the same condition as they were before that act ; and then requisition or a charge did make sums bearing annualrent or infestment simply moveable, unless past from, by taking annualrent for terms posterior : And as to the *second*, the first instrument of requisition would have been sufficient, though it bore no mention of procuratory, which is presumed to have been known to the party ; and therefore the Lords have in many cases sustained requisition or premonition by procurators, without mention of the production or reading thereof, when an anterior procuratory is produced in process, and when the procuratory was not called for, and refused to be produced at the time of the requisition.—It was *duplicated*, That though in some favourable cases the Lords have dispensed with, or supplied the not production of a procuratory or warrant, as in redemption of land, or in questions betwixt the heir and executor, yet it was never extended to sustain a requisition to make a sum moveable, and thereby to fall to the fisk, which is penal, loosing the sum to the creditor, and all having interest in him ; neither can a second instrument from the same notary be admitted, after the first is judicially produced, albeit the Lords, upon supplication, representing that the notary refused to extend an instrument, without mention of the former instrument extended by him, and judicially produced, did give warrant to the notary to extend it, which passeth in course always.

THE LORDS refused to admit of the second instrument, after the judicial offer of the first, and refused to supply or sustain the same in a case so penal, and therefore preferred the creditors to the donatar. See REDEMPTION.

No 16.

Fol. Dic. v. 1. p. 953. Stair, v. 2. p. 492.

*** See Dirleton and Gosford's report of this case, No 19. p. 3630.
voce ESCHEAT.

1679. December 11. COUNTESS OF CASSILLIS *against* EARL OF ROXBURGH.

No 17.

AN execution, bearing a copy delivered to the party's wife, was not sustained, unless it were added, that it was delivered to her in the party's dwelling house.

Fol. Dic. v. 1. p. 552. Stair.

*** This case is No 19. p. 3695. voce EXECUTION.

*** Fountainhall likewise mentions it :

AN execution sustained, though it wanted six several knocks, and the fixing a copy, because it bears a copy was delivered to the Earl's own servant in his house. See act 75th, Parl. 6th, James V.

Fountainhall, MS.

1683. November 10. MAXWELL and HOME *against* THOMSON.

No 18.

AN execution being quarrelled on the act of Parliament 1672, for not designing specially the defender, it was *alleged*, That act meant principally of citations to be used as interruptions, &c. THE LORDS, on Pitmedden's report, allowed the pursuer to mend his execution, and that being done, sustained it.

Fol. Dic. v. 1. p. 552. Fountainhall, v. 1. p. 242.

*** Sir P. Home reports this case :

ADAM MAXWELL and George Home, merchants, having pursued Andrew Thomson, skipper, for payment of a debt, *alleged* for the defender, That by the 6th act, § 3d, Parl. 2d, Charles II. it is provided, that all executions of summonses shall bear expressly the names and designations of the parties, pursuers and defenders, and that it shall not be sufficient that the same do relate generally to the summons, otherwise the execution shall not be sustained; so that, seeing the executions of this summons bear only Andrew Thomson, within designed, to be summoned, without designing him in the execution, it is null.—*Answered*, That the foresaid clause in the act of Parliament has not been in use