

No 50.

the requisition, the defender proving that he was out of the country, which being proven, they did find him only liable from the date of the citation before the Lords, but he failing to prove, or admitting to the pursuer's probation that he was in the country, they proving the same, they found him liable from the date of the requisition. But in respect the instrument of requisition was quarrelled upon that ground, that there was neither a procuratory given nor produced, the LORDS did ordain that the procuratory should be produced, and that the notary should declare that he knew the verity thereof, and that it was good and sufficient, as likewise that the security offered should be condescended on and produced, and found to be such as the wadsetter could not refuse, otherwise they declared that they would not sustain the requisition.

*Fol. Dic. v. 1. p. 261. Gosford, MS. No 352. p. 170.*

\* \* \* The same case is reported by Stair, *voce* REDEMPTION.

No 51.

A horning upon an act of adjournal of the court of justiciary, against a person out of the kingdom, need not be denounced at the pier and shore of Leith; but only at the market-cross of Edinburgh.

1687. July.

SCHELL *against* SCOT.

MR PATRICK SCHELL, as donatar by the Marquis of Douglas to Thomas Ogilvie of Logie, his single and liferent escheat, having pursued a general and special declarator against Logie, and Mr Robert Scott, minister at Hamilton, for the rents of the lands of Logie, which are a part of the regality of Killimuir, whereof the marquis is superior, *alleged* for the defenders, That the horning upon which the gift proceeded was null, because the denunciation was only at the market-cross of Edinburgh, and not at the pier and shore of Leith, Logie being out of the country for the time; and albeit the horning should be sustained, yet Mr Robert Scott ought to be preferred to the rents of the lands, because Logie being formerly year and day at the horn, the marquis did grant a gift of his liferent escheat to the Lord Torphichen, who was a creditor of Logie's, so that his liferent escheat being once gifted to the Lord Torphichen, it cannot fall or be gifted to any other; for, whatever may be pretended in the case of a single escheat, it comprehends only the moveables belonging to the rebel the time of the gift, and within year and day thereafter; yet, it is not so in the case of a liferent escheat, which comprehends the rents of the lands during the rebel's lifetime; so as a man cannot have two lifetimes, so neither can there be two liferent escheats. *Answered*, That the denunciation of the horning, upon which the gift proceeded, being upon an act of adjournal of the justice court, it is sufficient that the denunciation be at the market-cross of Edinburgh, as it is declared by the 126th act, Parl. 12. James VI. And the first gift granted to the Lord Torphichen was to Logie's own behoof, and as equivalent as if it had been given to himself, and so became extinct; and he thereafter being year and day at the horn, his liferent escheat did again fall to the superior, and may be gifted to a second donatar. THE

LORDS found the denunciation at the market-cross of Edinburgh sufficient to make the liferent escheat fall; and, before answer to the second point, ordained the pursuer to condescend, *quo modo* he can instruct that the gift taken in the Lord Torphichen's name was to the rebel's behoof.

No 51.

*Fol. Dic. v. 1. p. 261. Sir Pat. Home, MS. v. 2. No 934.*

1747. December 27.

JOHN WATSON *against* ANDREW RAMSAY.

No 52.  
A denunciation of horning against a person out of the kingdom at the market-cross of Edinburgh only, does not give currency to annualrent.

MR ROBERT CHEYNE, minister of the gospel, married Jean Orrock, relict of Mr Andrew Ramsay, minister of the gospel, who was entitled to an annuity of 2000 merks Scots, from Andrew Ramsay her son, by his bond.

Andrew Ramsay having gone abroad, and the annuity not being paid, Mr Cheyne executed a horning, and denounced him at the market-cross of Edinburgh, for the whole terms payments from the date of the bond till Jean Orrock's death; and after disposed his whole effects to Jean his daughter, and Alexander Hay, writer to the signet, her husband, for his interest.

John Watson, writer to the signet, appointed, on Alexander Hay and Jean Cheyne's death, factor by the tutors to their children, pursued Andrew Ramsay for the sum due, with annualrent from the date of the denunciation; whereupon the LORD ORDINARY 'repelled the defence, founded on the denunciation not being executed against the defender (then out of the country) at the market-cross of Edinburgh, pier and shore of Leith; and found the denunciation at the cross of Edinburgh regular and sufficient, and therefore found the defender liable to the pursuer, as factor for the children of Alexander Hay, and their curator, in payment of the annualrents of the said 2000 merks, from the date of the bond till the death of Jean Orrock, and interest thereof from the date of the denunciation libelled on, and in time coming during not-payment.'

*Pleaded* in a reclaiming bill, That a horning ought to be denounced at the market-cross of the rebel's residence, or if he were out of the kingdom, at the the pier and shore of Leith; and though custom had sustained a denunciation at Edinburgh to be a warrant for caption, yet it had no further effect, either to make escheat fall, or the debt bear interest; and, what was statute by act 128. Parl. 1592, that escheats should fall on denunciations on criminal letters at Edinburgh, was a proof that such denunciations in civil cases had not that effect, as the statute was necessary to introduce it in criminals; and therefore a denunciation, not at pier and shore, was sustained against an absent, because it was on act of adjournal of the justice court, Shiell against Scott, No 51. p. 3716.

*Answered*, That it behoved to be admitted, denunciations at Edinburgh had some effect; they were warrants for caption, and caption was only granted because of the contempt in disobeying the charge. It was true, that in order to introduce the exceeding penal consequences of an escheat, practice had made