

1710. December 22.

WILLIAM BAILLIE of Lamingtoun *against* MR ALEXANDER MENZIES of Culterallers.

No 32.

Citation of one not personally apprehended, by leaving a copy at another's dwelling-house, which the execution bore to be his special residence at the time, was sustained, the pursuer proving that he had resided there 40 days before the citation.

IN the process of count and reckoning, at the instance of Lamingtoun against Mr Alexander Menzies, as representing his grandfather, who was one of the pursuer's curators,

*Alleged* for the defender; No process can be sustained against him, in respect he was neither personally cited, nor at his dwelling-house; but the execution bears only, that a copy was left to him at the dwelling-house of Sir William Menzies of Gladstains in Culter, his special residence for the time; and the defender, or his family, had no other residence in Culter then (which was Sir William Menzies's house) than by way of visit.

*Replied* for the pursuer; These words, 'his special residence,' can only respect the defender's residence; since Sir William Menzies was not the person to be cited, but only mentioned casually, because of the defender's residing with him at the time. And the execution bearing the defender to have been cited at his dwelling-house specially designed, *habetur pro veritate*, unless he redargue it by proving that he had then his residence or *larem et focum* elsewhere.

*Duplied* for the defender; Whatever might be pretended for the faith of the execution, unless disproved by a positive contrary probation, had it borne that the defender was cited at his own ordinary dwelling-place; yet when it bears only, that the copy was left for him at the dwelling-house of Sir William Menzies (who used to have his residence sometimes at another house called Gladstains) the pursuer must support it by proving that the defender or his family had resided at Culter forty days at least before the date of the citation.

THE LORDS sustained the execution; the pursuer proving, that the defender had his residence, 40 days before the execution, at Sir William Menzies's house in Culter.

*Fol. Dic. v. 1. p. 259. Forbes, p. 464.*

No 33.

1725. July 30. ANDREW HOME *against* The CREDITORS of LADY ECCLES.

It was *alleged*, That an arrestment was null, because it bore to be laid on at Mr Home's house in Edinburgh, whereas he had no residence but in the country; yet the LORDS sustained the arrestment, the users of it proving that Mr Home had a house taken for his children at Edinburgh, and that he was in town at the time of executing thereof, although he had not staid for forty days upon the place.

Act. *Jo. Erskine.*

Alt. *Ja. Colvil.*

Clerk, *Justice.*

*Fol. Dic. v. 3. p. 186. Edgar, p. 204.*