

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.

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

No 51.

1747. December 27.

JOHN WATSON *against* ANDREW RAMSAY.

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

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.

No 52.

it also necessary to denounce at the cross of the jurisdiction of the rebel's residence ; but, since the act making annualrents due upon denunciation, had not expressed where it was to be executed, and since denunciation at Edinburgh was effectual for some purposes, it behoved to be incumbent on the pursuer to shew, that for this purpose it ought to be executed any where else ; nor could the contrary be inferred from the statute cited by the pursuer, and decision thereon, as that concerned the fall of an escheat.

Though this denunciation fell not to have been sustained against a person within the kingdom, it ought to be against one out of it, Edinburgh being the *communis patria*, as was found, 4th July 1666, Cunningham against Cunningham, No 48. p. 3714. And an order of redemption at Edinburgh, against a person out of the kingdom, was sustained, Moray against Lord Yester, No 45. p. 3711.

THE LORDS found the denunciation having been only used at the market-cross of Edinburgh, was not sufficient to infer annualrents, or make the same due upon the sums charged for.

Act. Lockhart.

Alt. A. Macdowall.

Clerk, Kirkpatrick.

D. Falconer, v. 1. No 214. p. 295.

1750. February 2.

The EARL of MARCH, *against* The CREDITORS of Sir ALEXANDER MURRAY of Stanhope.

No 53.

An inhibition is good against a person out of the kingdom, at the market-cross of Edinburgh, and pier and shore of Leith, and against his creditors at the cross of the county where his mansion-house is situated.

AN inhibition at the instance of the Earl of March, was executed against Sir Alexander Murray of Stanhope, at the market-cross of Edinburgh, and pier and shore of Leith, he being out of the kingdom ; and at the market-cross of Peebles, within which shire his principal dwelling-house was : But it was not cleared whether he had any family there at the time.

Objected for the Creditors posterior to the inhibition, The 268th act, Parl. 15, Ja. VI. enacts, ' That inhibitions and other diligences, should be execute at the head burgh of the jurisdiction wherein the debtor dwells ;' but Sir Alexander did not dwell within the shire of Peebles, nor within Scotland ; and therefore the execution against the lieges ought to have been at the cross of Edinburgh, and pier and shore of Leith ; that supplying the domicile of persons out of the kingdom.

Answered, It were preposterous to make the execution against the lieges, at the market-cross and pier and shore, as they are not out of the kingdom ; but they are properly certiorate at the head burgh of the jurisdiction, where the debtor has his principal house ; the inhabitants of that jurisdiction being those he is likeliest to have dealing with.

THE LORDS repelled the objection.

Reporter, Strichen.

Act. R. Craigie.

Alt. T. Hay.

Fol. Dic. v. 3. p. 187. D. Falconer, v. 2. No 128. p. 145.