

and most of them deponed, that they were his nearest neighbours, and saw him frequently come and go to his house, but could not depone how long he was there, or how long he was absent about his business.

THE LORDS found, That albeit a domicile by 40 days staying at any place, though in an inn or hired chamber, might be sufficient to sustain a citation made there, yet not to constitute a domicile, whereupon denunciation and escheat might follow, or whereupon the confirmation of a defunct's testament might fall to the Commissary of that place; but as to these the principal domicile behoved to be considered; and found, that by the probation foresaid, Fermour's principal domicile was at Edinburgh, where he had his house and plenishing, and was the most part of his time; and therefore found the denunciation at Cupar null, and assoilzied.

*Stair, v. 2. p. 119.*

1675. July 27. ALEXANDER ARBUTHNOTT *against* HENRY BARCLAY.

IN a declarator of escheat at the instance of the said Alexander against the said Henry, it was *alleged, imo*, No declarator, because the letters of horning whereupon he was denounced were general, not bearing any special cause or debt; *2do*, The defender was relaxed from the horn at the market cross of Edinburgh, within year and day after the execution of the horning.—It was *replied* to the *first*, That the letters were raised upon a registrate contract of marriage, and the defender charged for implement thereof, wherein there were special obligations for infesting the charger, who had married the defender's daughter, in the estate, free of all debt, for performance whereof he was charged, and denounced for not giving obedience.—To the *second* it was *replied*, That the denunciation being at the head burgh of the shire of the Mearns, the relaxation within year and day ought to have been at that same place, and being at Edinburgh was null.—THE LORDS did repell the first defence, and found, That letters raised upon a contract, bearing special heads and articles, albeit the execution did not bear the particular head craved to be performed, yet they could not be called general letters, such as resolved in a naked citation, as when a party is charged upon a presentation to a benefice or any other office, *ad certiorandum*, and who is not otherwise obliged by bond, and so sustained the declarator. They did likewise the second allegiance, in respect of the 75th act, Parliament 6th, James VI. bearing expressly that all relaxations should be at the same head burgh of the shire where the rebels were denounced, and did dwell the time of the denunciation, otherwise to be null.

*Fol. Dic. v. 1. p. 262. Gosford, MS. No 792. p. 498.*

No 61.

No 62.

Relaxations must be executed at the head burgh of that same shire where the denunciation was made, otherwise they are null.