

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.

* * * Kilkerran reports the same case :

No 53.

IN the ranking of the Creditors of Sir Alexander Murray of Stanhope, it was *objected* to an inhibition at the instance of the Earl of March, that the execution against the lieges was null, being at the market cross of Peebles, whereas it ought to have been at the market-cross of Edinburgh, and pier and shore of Leith, as the execution against the party himself was, being at the time out of the kingdom ; and that the practice is, for all edictal executions for publication, as well as executions against the party, to be at the market-cross of Edinburgh, and pier and shore of Leith, when the party is out of the kingdom.

THE LORDS, without appointing any inquiry to be made as to the practice, ' Repelled the objection ;' which they mainly put upon the will of the letters, which uniformly is to be executed against the party personally, or at his dwelling-house, if within the kingdom, and against the lieges at the market-cross of the jurisdiction where he dwells, and other places needful, but without a warrant for executing against the lieges at the market-cross of Edinburgh.

There is no statute requiring an execution even against the party, to be at the market-cross of Edinburgh, when he is out of the kingdom, the statute being only with respect to persons within the kingdom. It is custom that has supplied this, arising from reason, as he may be informed by persons going out of the kingdom ; and the necessity of the thing, as the execution must be somewhere ; whereas, nothing in either requires the execution against the lieges to be at the market-cross of Edinburgh, nor could it answer the intention of the execution. The execution against the party is intended as a notification to him ; and therefore, though he have his residence in Orkney, if he be found at Edinburgh or Glasgow, a personal execution against him there is the most proper execution, as it gives him the most certain notice. And if he have his residence so long at Edinburgh or Glasgow as to constitute a domicile, the execution there at his dwelling-house is, for the same reason, the proper execution. Nevertheless, the execution against the lieges must still be at the head burgh of Orkney, as the intention of the execution against the lieges is to affect his credit with them ; which intention would not be so well answered by an execution at the market-cross of Edinburgh or Glasgow, where, notwithstanding his occasional residence, he may be little known ; nor is it likely, that the persons are there with whom he has the most intercourse. And in like manner, when the party is out of the kingdom, the execution against the lieges best answers the intention, when the publication is made to them at the market-cross of his ordinary residence, when within the kingdom ; for, as the lieges, against whom the inhibition is executed, are supposed to be within the kingdom, the publication at the market-cross within the jurisdiction where the debtor had his ordinary residence, is the only proper publication to them : And to argue for a publication at the market-cross of Edinburgh to the lieges, from its being

No 53. proper to be made there to the party, is to argue from words and sound, without adverting to the purpose and intention of the thing.

Kilkerran, (INHIBITION.) No 12. p. 299.

1785. February 23.

No 54.

ALEXANDER TENANT and Others, *against* ALEXANDER JOHNSTON and Others..

In a complaint upon the election statutes against a person out of the kingdom, the person complained on may be cited edictally without a special warrant of the Court of Session for that effect.

ALEXANDER TENANT, and others, complained to the Court of Session, in terms of the statutes 16th Geo. II. and 14th Geo. III. of certain proceedings in the election of magistrates for the burgh of Anstruther-Easter.

One of the parties interested in this complaint, having his residence in England, the messenger employed by the complainers executed it against him at the market-cross of Edinburgh, and pier and shore of Leith.

By way of preliminary defence, therefore, the respondents

Pleaded ; Judicial citation is performed either by personal intimation to the party, or by leaving a copy of the summons, or other libel, at his dwelling-house. When neither of these methods, on account of the situation of the defender, can be practised, a warrant must be obtained from the Court of Session, who, in virtue of their prætorian jurisdiction, authorise a special form of summons, adapted to the circumstances of the case. As the messenger, in this instance, was not so warranted to depart from the general practice, the present complaint must fall to the ground, because the whole parties interested in its discussion have not been regularly brought into the field.

Answered for the complainers ; The remedy of abuses committed at elections has no affinity to that instituted at common law for the redress of wrongs of a pecuniary nature. The matters complained of, the extent of the redress, the period within which the complaint is to be entered, with the form in which it is to be presented and discussed, as regulated by the several statutes made in that behalf, are essentially different. In all those enactments, however, the form of executing complaints is no where ascertained. The person to whom this business is entrusted, is thus left to his own discretion, which could not be here more properly exercised, than in adopting that proceeding, which, in the practice of the common law, would have been proper in the same circumstances.

Observed on the Bench ; The preferring of the complaint being alone sufficient for interrupting the statutory prescription of four months, the respondents could derive no other advantage from the sustaining of this objection, than to put the complainers to the trouble of a new citation. But the execution already used seems abundantly formal.

‘ THE LORDS repelled the objection.’

For the Complainers, *Crosbie.*

Alt. Wight, J. Anstruther jun.

Ecl. Dic. v. 3. p. 188. Fac. Col. No 202. p. 317.