

No 46. ment 12, James VI, are declared null : but the comprising was reduced, notwithstanding of the argument proponed in the contrary, as is before noted.

Fol. Dic. v. 1. p. 260. Durie, p. 588.

No 47.

A special place being appointed in a reversion for consigning money, and the wadsetter being abroad, the Lords granted warrant to cite him at the market cross of Edinburgh and pier and shore of Leith.

1632. February 8.

DYELL against BRUCE.

IN a declarator of a redemption, pursued by Thomas Dyell of Kinnes against Mr Robert Bruce, it is *alleged*, that conform to the reversion, premonition was not made at the said — house. It was *answered*, that the defender was out of Scotland, in France, *animo remanendi*, these thirty years; whereupon THE LORDS granted the pursuer letters to make admonition to the defender, at the market-cross of Edinburgh, pier and shore of Leith; and conform to the Lords' deliverance, he made admonition at the said places, which THE LORDS sustained.

Fol. Dic. v. 1. p. 261. Auchinleck, MS. p. 181.

No 48.

A denunciation at the market cross of Edinburgh against a person out of the country is sufficient, tho' his lands lye in another sheriffdom.

1666. July 4.

CUNNINGHAM against CUNNINGHAM.

JEAN CUNNINGHAM donatar to the liferent escheat of umquhile Sir David Cunningham of Robertland, pursuing a general declarator, the horning was quarrelled upon this ground, that Sir Robert being in England the time of the denunciation, and the denunciation being at the market-cross of Edinburgh, the samen was null, because it should have been executed at Irvine, the head burgh of the bailliary within which the lands lye, especially Sir Robert having been for the time prisoner in England, and so absent *republicæ causa*. THE LORDS, notwithstanding of the allegiance proponed, sustained the horning, and found it sufficient to denounce at Edinburgh, and pier and shore of Leith, *tanquam communis patria*.

Fol. Dic. v. 1. p. 261. Newbyth, MS. p. 68.

No 49.

Requisition against a party out of the country should be at the market-cross of Edin-

1669. July 15.

LEITH against EARL MARSHALL.

IN the action betwixt Leith and the Earl of Marshall, after the right made to Leith's brother by his wife was reduced upon minority and lesion, it was *alleged* for the husband Leith, that he had right to the sum of 1200 merks, contained in the wadset of the lands of Troup, in so far as his wife, with consent of her

tutor, had required the Earl of Marshall before her marriage to make payment, and by the marriage (the sum being made moveable) he had right thereto, *jure mariti*, so that albeit the right of the wadset could be reduced, yet it could not be to the prejudice of his right, which ought to be paid. It was *answered*, that reduction being a real action, the defence was not relevant to hinder the same, seeing they declared that the decret reducing the wadset should be but prejudice of the husband's right to the sum, *jure mariti*. THE LORDS, notwithstanding did sustain the allegiance, but declared that it was *ex gratia*, and only of purpose to put an end to the pleas betwixt the parties, which had depended 30 years space. Thereafter the husband insisting upon the requisition and his *jus mariti*, it was *alleged* against the requisition, that it was null, in respect that the Earl of Marshall, being out of the country, he was required only at his dwelling house before a notary and witnesses, but not at the market-cross of Edinburgh, and pier and shore of Leith, whereat he was only charged by a mesenger by letters of supplement. THE LORDS did sustain the allegiance, and found that the Earl ought to have been required before a notary and witnesses at the market-cross of Edinburgh, pier and shore of Leith. But Leith *alleged* thereafter, that he offered to prove that he was lawfully required. THE LORDS did sustain the same, and assigned a day to that effect.

No 49.
burgh, and
pier and shore
of Leith, only.

Fol. Dic. v. 1. p. 261. Gosford, MS. No 179. p. 72.

* * The same case is reported by Stair, *voce* PRESCRIPTION.

1671. June 16. The LORD LOVAT *against* The LORD MACDONALD.

THE Lord Lovat having intented action against Macdonald, upon the act of Parliament anent debtor and creditor, for payment of the superplus of a wadset granted of a part of Lovat's lands, for the sum of 5000 merks, which they *alleged* were worth 2000 merks of yearly rent; and that since the year 1662, in respect that Macdonald was required, and instruments taken, to accept of security for payment of his annual rent; it was *alleged*, that the requisition was only at the defender's dwelling-house, he himself being out of the country, and that letters of supplement ought to have been raised, and intimation made upon 60 days. *2do*, A simple requisition was not sufficient, and the defender could only be liable from the date of the summons raised thereupon, which was not until two years thereafter. It was *replied*, that the act of Parliament did not ordain requisitions to be made of that kind, but in respect of the exorbitancy of the wadset it was sufficient to require at the dwelling-house, and that thereupon summons being raised, *quocunque tempore*, the defender was liable for the superplus rents after the requisition. THE LORDS did not sustain.

No 50.
Found in conformity with
the above.