

1795. *January 14.*FRASER, REID, and SONS, and their TRUST-INDORSEES, *against* LANCASTER
and JAMIESON.

No 35.

An arrestment used in the hands of a merchant found to be null, because it was executed by leaving a copy of it for him at his counting-room, which was apart from his dwelling-house.

MESSRS LANCASTER and JAMIESON, creditors of Campbell, on the 6th February 1793, executed arrestments against his debtors, and in particular against James Coats, merchant in Glasgow. The execution of the arrestment bore, 'of which letters I left a just copy of arrestment for each of the said Michael Muirhead and Company, James Coats, Mitchell and Anderson, within each of their respective accounting-houses in Glasgow, with each of their respective clerks, to be by them given to each of their said respective masters, because, after enquiry made by me for them there, I could not apprehend them personally.'

The counting-house of Mr Coats was in a different street, and at a considerable distance from his dwelling-house.

Messrs Fraser, Reid, and Sons, likewise creditors of Campbell, executed an arrestment, dated 6th June 1793, against Mr Coats, by delivering a copy of it to himself, personally apprehended.

Mr Coats having called both arresters in a multiplepinding, Messrs Fraser, Reid, and Sons

Pleaded; The act 1540, c. 75. requires, that officers executing King's letters shall pass to the 'door of the principal dwelling-house where the person to be summoned dwells, and has his actual residence at the time,' and where forms are established by statute, they must be literally complied with; Stair, 11th December 1679, Countess of Cassilis against the Earl of Roxburgh, No 19. p. 3695.; President Falconer, 1st February 1684. Anderson, No 83. p. 2857.; Forbes, 14th July 1708, Bruce against Hall, No 22. p. 3696.; 23d November 1681, Sanders against Jardin, Div. 4. Sec. 14. *b. t.*; Macdowall, b. 4. tit. 37. § 3. The arrestment of Lancaster and Jamieson, therefore, being executed at the counting-room, and not at the dwelling-house of the arrestee, is inept.

Answered; As the sole object of the statute 1540 was to establish a method of executing diligences, by which the parties should with certainty be informed of those directed against them, its spirit and intention have in this case been fully attained.

The literal enactments of the statute have been departed from in many particulars more essential than the present; for instance, it enjoins messengers to pass to the principal door of the dwelling-house, 'to show the cause of their coming, and to make public exhibition of their letters;' all these solemnities are, however, for the most part, omitted. Besides, the practice objected to has been very common, particularly in Glasgow.

The decisions referred to were pronounced above a century ago, when the statute received a more rigorous interpretation, and are opposed by others of a

more recent date, Forbes, 22d December 1710, Baillie against Menzies, No 32. p. 3704.; Fac. Col. 17th July 1752, Clerk against Waddel, Div. 7. b. t.

No 35.

THE LORD ORDINARY repelled the objection ;

But on advising a reclaiming petition, answers, replies, and duplies, the COURT unanimously, ' in respect the execution of the arrestment was informal, sustained the objection to the interest produced for Lancaster and Jamieson.'

Lord Ordinary, *Stonefield.*

For the Objectors, *Lord Advocate Dundas, J. W. Murray.*

Alt. Maconochie, Fletcher.

Clerk, Pringle.

R. D.

Fol. Dic. v. 3. p. 188. Fac. Col. No 148. p. 339.

SECT. III.

Edictal Citation.

1491. *February 22.*

PATRICK HOME of Fastcastle *against* PERONELL LIBBERTON.

QUHEN ony persoun needs to be summoundit, he aucht to be summoundit first personallie, or at his dwelling place, gif he ony hes, conform to the act of Parliament. And gif he be a vagabond, havand na certane domicile, nor zit be apprehendit personallie, it is sufficient to summound him be opin proclamatioun at the heid burgh of the schire quhair he maist commonlie hauntit and usit, befoir the time of the executioun of the saidis summoundis.

Fol. Dic. v. 1. p. 260. Balfour, (SUMMONS) No 41. p. 312.

No 36.

A vagabond may be summoned at the market cross of the head burgh of any shire, where he most commonly haunted, before the execution of the summons.

1625. *July 26.*

L. RANKILOR *against* L. AITON.

IN an action of poinding of the ground for an annualrent, pursued by the Laird of Rankilor against the Laird of Aiton, who was a minor, and was convened with his tutors and curators generally, who were summoned at the market-cross of the head burgh of the sheriffdom where the minor had his actual remaining and being, and at the which the minor's self was summoned, was sustained by the LORDS, and found it a sufficient citation of the minor's tutors and curators; neither was it found necessary, that the tutors and curators should be summoned at the head burgh of the Sheriffdom within the which themselves dwelt, nor that they or the minor himself should be summoned at the market-

No 37.

In citing a minor in a process of poinding the ground, it was found sufficient to cite his tutors and curators at the market cross of the head burgh of the shire where the minor dwelt, though nei-