

S E C T. II.

Designation of the Dwelling-place.

No 85.

Execution at the dwelling-place ought to name the place, otherwise it is null.

1582. July.

KING'S ADVOCATE *against* BURNET.

THE King's Advocate persewit one Burnet for the breaking of ane arrestment. It was *alleged*, That the execution of the arrestment buir, that there was execution of the arrestment made at the dwelling-place of him whose gear was arrested, and condescendit not into special on the name of the dwelling-place, or what part the same was into; for, be this manner of execution, and indorsation, the party's defences were taken fra him; whilk allegiance was admittit be the LORDS, and fand that the said execution was not guid.

Fol. Dic. v. 1. p. 263. Colvil, MS. p. 337.

No 86.

Found as above.

1609. February.

JOHNSTON *against* JOHNSTON.

CHARGES of horning executed at ane man's dwelling-place, not designing expressly where the dwelling-place is, fund to be null be interlocutor.

Fol. Dic. v. 1. p. 263. Haddington, MS. No 1584.

1626. July 14.

ADAM *against* BAILLIES of AYR.

No 87.

The execution of a horning, bearing to be against the party, bur-gess of Ayr, at his dwell-house, but not adding the word

ONE Adam pursues the Baillies of Ayr, for payment of the debt, for the which his debtor, being rebel, was incarcerated, and thereafter they suffered him to go to liberty. The Baillies compearing, *alleged*, The horning whereupon caption was executed, was null; because the charge given to the party, whereupon he was denounced, was not lawful, seeing the same bore to be executed at his dwelling-place, and made no special mention nor designation of his dwell-

ling where he was charged, which allegiance was found relevant, and so that the horning was null, and therefore the Baillies were assoilzied *simpliciter* from the pursuit; albeit the pursuer *replied*, That the horning could not be found null for that alleged defect, seeing it was executed against a burges of Ayr, whose dwelling must be presumed to be in Ayr; and also, that the execution bears, that a copy was delivered to his wife, being then personally present; likeas, it was further *replied*, That the Baillies cannot excuse themselves by that alleged nullity, to put the said rebel to liberty, whom they had apprehended by virtue of letters of caption, and had once incarcerated, after whose incarceration, they could not at their own hands, without a warrant of some sovereign judge, enlarge him thereafter. Which reply was not respected, for the horning was found null for the reason foresaid, and so they had no necessity to have taken him, who was not lawfully at the horn; and, being taken, they had no necessity to retain him in ward.

Act. Miller.

Alt. Belsher.

Fol. Dic. v. 1. p. 264. Durie, p. 217.

. Spottiswood reports the same case :

THE Baillies of Ayr being convened by Adam N. for letting Robert Dalrymple, (whom by virtue of letters of caption they had first apprehended at that N. his instance) free again, they *objected* nullity against the horning, because the officer in his executions said only that he had charged Robert Dalrymple, burges of Ayr, at his dwelling-place [without further, not saying, *there*, or designing his dwelling particularly] and likewise had given his wife a copy. The horning was annulled for lack of that one word or circumstance, for things that are odious should not be extended.

Spottiswood, p. 148.

1632. November 9.

MONTGOMERY against L. FERGUSHILL.

A GENERAL declarator of the escheat and liferent of ———, being pursued by Montgomery, the rebel's creditor, and which he declared he took and used only to recover payment of his own debt; Fergushill defender being also donatar and creditor of the same rebel, *alleging*, That the pursuer's horning produced, whereupon the gift of escheat was given, was null, because the debtor was not charged, neither personally, nor at his dwelling-house thereby, in so far as the execution bore, that the messenger charged the said debtor, whom he designed by the style of his roun of ———, at his dwelling-place there, and the execution designed no dwelling-place particularly, whereat he charged him, as it ought. This allegiance was repelled, and the horning sustained, for the execution was holden, as if it had borne to be done at the party's dwelling-

No 87.

'there,' was found null, and the debtor being incarcerated, the magistrates of the burgh were assoilzied from an action at the creditor's instance for suffering him to escape.

No 88.

An execution of a horning, designing the debtor 'of A,' and bearing the charge to be left at his dwelling-house *there*, was sustained.