

# APPENDIX.

## PART I.

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### EXECUTION.

1798. *January 19.* JANET CALDER *against* JOHN WOOD.

JOHN WOOD, a native of Scotland, set up business in Glasgow, but having been unsuccessful, he obtained employment in the office of the Commissary-General of the Army, which occasioned his leaving this country.

In autumn 1796, after an absence of about five years, he made a visit to his friends in Scotland, during which he sometimes lived in a furnished lodging in Glasgow, and at other times at his father's house, within a few miles of it. After spending more than forty days here, he got orders to prepare himself for duty in the West Indies, and set out for England.

Mr. Wood, when settled in Glasgow, had a connection with Janet Calder, and, according to her allegation, had given her a written promise of marriage.

On the 10th October 1796, when Mr. Wood was in Edinburgh, on his way to England, Janet Calder executed a summons of declarator of marriage against him, by leaving a citation at the furnished lodging in Glasgow, which he had quitted on the 7th or 8th of that month. It was carried by the owner of the lodging to Mr. Wood's man of business in Glasgow, and there was reason to believe, that he got notice of it before he left Edinburgh.

When the action came into Court, the defender stated objections to the validity of the citation, which were repelled by the Commissaries, and a bill of advocacy having been refused, he, in a reclaiming petition,

Pleaded: The defender being in this country only upon a visit, he could not acquire a domicile at a lodging house, so as to render a copy of the sum-

#### No. 1.

A native of Scotland, who had been several years abroad, having come to this country on a visit, and resided more than forty days in it, was found to be lawfully summoned by a citation left for him at the lodging-house where he had chiefly staid, altho' he had quitted it, and was on his road to England, two or three days before the citation was given.

No. 1. mons left for him there a legal citation, Ersk. B. 1. Tit. 2. § 16. Besides, the statute 1540, C. 75, requires, as the only substitute for a personal citation, that the citation be left at “the principal dwelling-place, where the person to be summoned dwells, and has their actual residence for the time;” but the defender had finally quitted his lodgings in Glasgow before the date of the citation in question, so that they cannot be considered as his dwelling-place in the sense of the statute.

Neither would it be of any consequence, were it admitted, that the defender got notice of the summons before he was out of Scotland, because the strongest presumptive evidence of private knowledge of a citation, will not supply a defect in its regularity. Dict. *voce* EXECUTION.

Observed on the Bench: The defender, by residing above forty days in Scotland, had acquired a domicile there; and, as the lodging house was his most ordinary place of residence, it must be considered as his dwelling-house, otherwise people in Mr. Wood’s situation could only be cited personally, which it might sometimes be difficult to accomplish.

The Lords unanimously refused the petition, without answers.

Lord Ordinary, *Craig*.

For the Petitioner, *Hope*.

Clerk, *Sinclair*.

*R. D.*

*Fac. Coll. No. 55. p. 124.*