

## S E C T. II.

Days, how computed.—*Induciæ* in a charge of horning.—Baron decrees.—Citations *pro confesso*.—Criminal sentences.—*Induciæ* before inferior courts.—Reductions and improbations.—Privileged summons.—Decree-arbitral.—Citation of tutors and curators.

## No 5.

Found, that the last day of the execution of a horning *cedit debitori*, although, computing *de momento in momentum*, the whole six days be complete some hours before the last day run out.

1581. December.

MENZIES against ———.

THERE was a horning produced by Menzies, brother to the provost of Aberdeen, and there was alleged against the execution of the same, that it was not lawful, nor agreed not with the tenor of the charges, which was to charge, and thereafter six days being outrun, to denounce and put to the horn; and the first charge being made upon the eleventh day, the execution was done upon the seventeenth day, so that betwixt the seventeenth and the eleventh day, there were but six whole days. To this was *answered*, That the charge was given upon the eleventh day at eight hours in the morning, and the execution was made on the seventeenth day at four hours afternoon, and so counting *de momento in momentum, aut de hora in horam*, there would be as many hours as would make six natural days. To this was *answered*, That there might not be six days outrun, and of the law *ultimus dies et totus dies cedit debitori*; and so the computation ought to be from the hail eleven days outrun, to six hail days thereafter haily furthrun. The whilk allegiance was admitted by the LORDS, and being voted, afternoon *liquet in causa*, found the exception not good.

*Fol. Dic. v. 1. p. 467. Colwil, MS. p. 315.*

## No 6.

A horning executed on shorter *induciæ* than required by act of Parliament, was sustained, because agreed to by the parties. See No 10.

1605. March 8.

HAMILTON against HARVIE.

DAVID HAMILTON, donatar to the escheat of Andrew Harvie, pursued for declarator thereof; it was *alleged*, That the horning was null, because it is prescribed by act 25th, made in the Parliament 1600, that all charges of horning against persons dwelling benorth Dee, the same shall be upon 15 days warning, otherwise to be null; and true it is that Andrew Harvie dwelt in Aberdeen, and was charged only upon ten days. It was *answered*, That the charge was lawful, because the act of Parliament was only made for personal charges requiring the compareance of parties; but this charge being directed upon a registered contract made since the said act of Parliament, and bearing registration and execution upon a simple charge of ten days, the same was lawful, and it is of verity that there intervened six weeks betwixt the charge and denun-

ciation; in respect of the which answer, the LORDS repelled the allegiance. It was farther *alleged*, That the horning was null, because Andrew Harvie dwelt within the regality of the College of Aberdeen, where there was a clerk and writer, and use of denunciation at the market-cross of Old Aberdeen.

No 6.

*Fol. Dic. v. 1. p. 466. Haddington, MS. v. 1. No 755.*

1611. *January 8.*BAILLIE *against* TORPHICHEN.

No 7.

A BARON'S decree may be executed incontinently, and needs not fifteen days delay.

*Fol. Dic. v. 1. p. 466. Haddington. Nicolson.*

\*.\* This case is No 16. p. 4797. *voce* FORUM COMPETENS.

1619. *November 12.*MAXWELL *against* STEWART.

No 8.

WHERE the pursuer having referred the summons to the defender's oath, the LORDS ordain the defender to be summoned at the cross of Edinburgh, pier and shore of Leith, on fifteen days, because he was summoned before on sixty days out of the country by a deliverance.

Clerk, *Durie.*

*Fol. Dic. v. 1. p. 467. Nicolson, MS. No 244. p. 173.*

1620. *January 26.*WRIGHT *against* WRIGHT.

No 9.

THOMAS WRIGHT pursues James Wright to repossess a part of a ship, and to pay the profit conform to condition. The pursuer refers, instead of probation, the summons to the defender's oath, being absent, viz. the LORDS ordains letter to warn the party at his dwelling, and at the cross of Edinburgh and pier of Leith on sixty days, because he is out of the country, to give his oath; quhilk citation they find as lawful as if he were personally cited within the country.

*Fol. Dic. v. 1. p. 467. Nicolson, MS. No 245. p. 173.*

1625. *February 4.*STUART *against* BRUCE.

No 10.

In a suspension at the instance of ——— Stuart of Currie in Orkney, against Andrew Bruce of Balwharg, for suspending of the charges executed against the

A charge of horning, on six days, given to a per-