

INDUCIÆ LEGALES.

SECT. I.

Whether a summons upon the passive titles can be raised and executed during the running of the days of the charge to enter heir.

1610. February 24. THOMAS GIFFART *against* COILZART of Sheriff-hall

No 1.

A SUMMONS raised and executed against him who is charged to enter heir before the term of the charge of the 40 days be expired, is null and no process will be granted thereupon.

Fol. Dic. v. I. p. 465. Haddington, MS. No 1825.

1622. February 8. LESLIE *against* INNES.

No 2.

PATRICK LESLIE having charged one Innes to enter heir upon 40 days. as use is, pursues him thereupon for payment of his father's debt. The defender compearing *alleged*, that that summons could not be sufficient, because the same was raised before the 40 days of the charge were expired, and therefore no process ought to be granted thereupon, seeing it was not lawful to raise the summons till after all the days were expired, after which he might conveniently intent his summons, and no sooner. This allegation was repelled by the LORDS, and the action sustained upon that summons and charge; for the LORDS found, that albeit the principal letters and summons were raised and dated before the 40 days of the charge were run, yet seeing it was not executed, nor the party summoned therewith till the 40 days were completely expired, albeit the letters were raised before the days were past, that the same was sufficient.

Act. Baird.

Alt. Hope.

Clerk, ———.

Fol. Dic. v. I. p. 465. Durie, p. 152.

No 2.

* * Kerse reports this case :

THE LORDS sustained a summons raised against a party as charged to enter heir, albeit the summons was raised within the 40 days, and that because the summons was not executed until the 40 days were expired.

Kerse, MS. fol. 139.

No 3.

1702. July 17.

BIGGAR *against* WALLAGE.

THE LORDS sustained a general charge and summons thereon, though both were given on the same day and at the same time ; because there were 21 days given for the first, and six for the second diet, after the out-running of the 40 days appointed for the general charge.

Fol. Dic. v. i. p. 465. Fountainball.

* * * This case is No 125. p. 3775, *voce* EXECUTION.

No 4.

An adjudication was sustained tho' it was executed before the days of the charge to enter heir were expired, and a part of the *induciæ* of the summons were co-incident with the days of the charge.

1703. November 30.

SINCLAIR of Barack *against* SINCLAIR of Southdun.

THE LORDS advised the debate, Sinclair of Barack *contra* Sinclair of Southdun. It was a competition betwixt two adjudications, both of them being for implemen of special dispositions, wherein Barack repeated his reduction of Southdun's adjudication as null, on this reason, that, before the forty days of the special charge to enter heir were run, Southdun had raised his summons of adjudication, and executed the same within the forty days of the charge, to conpear upon twenty-one days warning, a part of which twenty-one days wereco-incident with the forty days of the charge, contrary to all form and law, which requires, that either the forty days of the special charge be elapsed before the summons thereon raised be executed, or else if it be executed during the currency of these forty days, that it have twenty-one free days for the first diet, and six for the second, over and above the forty days, making in all sixty-eight days, conform to the 106th act 1540, and the 27th act 1621, which specially require the elapsing of the forty days of the charge before executing the summons; which not being observed by Southdun, his preposterous diligence must be declared null. *Answered for* Southdun, *imo*, his adjudication being all proved *scripto*, needed not two diets, but only one. *2do*, Though it had, yet by the continued practice and style now received, these *duplicatæ induciæ* of forty days, and then twenty-one and six for the two citations on the summons, are wholly in desuetude ; and by our style there is nothing more ordinary now than to raise them both at one time, providing the