

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-

No 10.

son benorth
Dee, was
found null,
although it
proceeded on
his bond, in
which he con-
sented that
letters of
horning on
six days
should pass.
See No 6,
and No 13.

said Stuart, whereby he was charged to pay a sum of money upon a simple charge of six days, conform to his bond, consenting that letters should be so directed; upon the which charge he was denounced to the horn; which letters were desired to be suspended; because, by the 25th act, 16th Parl. Ja. VI. anno 1600, it was ordained, that no letters of horning be directed against persons dwelling benorth Dee, upon shorter space than 15 days; and which, if they are otherwise used, the hornings thereupon are declared null. Which reason being considered by the LORDS, they found the horning null, because the charge of horning was not executed conform to the act of Parliament foresaid, upon 15 days, the party charged dwelling in Orkney; albeit it was answered by the charger, That the act of Parliament militated not in this case, which only was intended for charges to be given to parties for their compearance, and for citation and such other charges, which had no warrant of the party's own consent, as those which pass upon obligations consenting to such charges, and authorized with sentence interponed thereto; for, it was alleged, that the preceding fact and deed of the party, whereupon these charges depended, ought to sustain the same, and that he might have dispensed with the said act of Parliament if the act had militated in this case, to which the said act could not extend, as might be evident by consideration of the narrative and intent thereof; notwithstanding whereof, the horning was found null, in respect of the said act of Parliament, which was found to extend to all charges of horning without exception.

Act. *Ayton.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. I. p. 466. Durie, p. 161.*

1626. July 27.

M'CULLOCH against M'CULLOCH.

No 11.

Although
brieves are
appointed to
be proclaimed
on 15 days,
the Lords
found it suf-
ficient if ei-
ther the day
of proclama-
tion, or the
day to which
they are serv-
ed, be count-
ed in the
number of the
days, and
that they
need not be
both free.

In a declarator of bastardy of M'Culloch contra M'Culloch, whereof mention is made, July 22. 1626, No 12. p. 2703. the LORDS found, that albeit it be required that the brieves be proclaimed upon 15 days warning, as is appointed by the 127th act, Parliament 9. Jas I., and by the 94th act, Parliament 6. Jas IV.; yet that the execution and space was sufficient, if either the day of citation, and whereupon the same was proclaimed, or the day to the which the said brieves were proclaimed to be served, were counted in the number of the said days, so that they needed not both to be free. In the same process also, the LORDS found a brieve, whereupon a service was deduced, to be null, because the same was blotted and vitiated in the day of the execution, albeit the party user of the brieve offered to prove, that the same was truly executed upon the very day which the execution reported, as it was mended, and that he alleged, that the same could not be found null for that cause, seeing he might lawfully mend his execution as in all other citations and summons, where the party