No 10.
son benorth Dee, was found null, although it proceeded on his bond, in which he consented 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 past 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. 1. *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 sufficient if either the day of proclamation, or the day to which they are served, be counted 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 proported, 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

abides at the same; which the LORDS repelled, in respect of the 113th act, Parl. 9. Ja. I., whereby it is declared, 'That brieves may be lawfully impugned, if they be razed or blotted in suspect places,' viz. in the name and sirname of the follower and defender, and the name of the land, or of the cause whereupon the brieves were purchased, and the date; which act the LORDS found to extend to the date of the execution of the brieve also, albeit the defender *alleged* it did only extend to the date of the brieve itself, and not to the date of the execution thereof. But the LORDS repelled the same, and found the act should extend to the date of the execution, seeing a brieve not executed is not a brieve, and there can no exception be proponed while the same be executed; so that the act declaring what exceptions should be admitted against brieves, cannot mean but of brieves executed, and therefore the date of the brieve should comprehend the date of the execution thereof. See PROOF. No 11.

Act. *Nicolson & Lawtie.* Alt. *Aiton & Neilson.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 467. *Durie, p.* 229.

1629. *November* 24. DOWNIE *against* BROWN.

No 12.
A poinding being executed for recovery of a fine for payment of which, the party might have been instantly imprisoned, it was found, that in such a case, there was no necessity for a previous charge.

IN a spuilzie, an exception of poinding being proponed to elide the same, which poinding was quarrelled, because it proceeded upon a sentence for conviction of blood, tried in a baron's court by the assizes; and, in the sentence, neither the names nor the numbers of the assizers were expressed therein, as it ought to proport, and also the poinding had no warrant in writ, for there was no precept directed by the baron bailie, after the sentence to poind for the unlaw, without which the decreet could be no warrant to poind; likeas the poinding was executed upon the morn after the sentence, whereas there ought to have been 15 days interjected betwixt the poinding and the decreet; for after the sentence, the party ought to have been charged to pay the penalty and fine upon 15 days, as term of law, before he could have been poinded, which not being done, the poinding was null. These objections against the poinding were repelled and the same sustained, seeing the sentence bore, 'that it was 'tried by a condign inquest,' and the persons' names needed not to be expressed, and there needed no precept in writ to poind, but the direction of the Bailie or baron in court was enough, and there needed no charge on 15 days to have preceded, the poinding being for a fine in a fact tried by an assize, for the which the party might be instantly put in ward after the sentence, albeit in civil matters, as for farms or sicklike decerned in baron courts, the officers cannot poind, before the charges to pay be executed upon 15 days, which is not needful in criminals and such like punishable acts. See POINDING.

Act. *Gilmor.* Alt. *Hay.*

Fol. Dic. v. 1. *p.* 466. *Durie, p.* 468.