

No 19.

seeing, in the decret of Parliament, my Lord Argyle's right and possession were quarrelled as wrong, and therefore were acknowledged to have been, and seeing Macdougals produces no other right, and the King's Advocate concurs; and if need be, my Lord Argyle offers to prove the lands in question are parts and pertinents of the lordship of Lorn, expressed in his sasine; and albeit this be pretended to be a decret of Parliament, yet by sentence of Parliament since, it is remitted to the LORDS, and is in itself visibly null, as having been intended against my Lord Argyle, and pronounced after his death and forfeiture, without calling the King's officers.

THE LORDS repelled these defences in respect of the replies.

Stair, v. 1. p. 296.

1665. July 22. THOMAS REW against Viscount of STORMONT.

No 20.
Summons not sustained, it not having been executed within year and day from its date.

THOMAS REW pursues a reduction of a decret obtained by the Viscount of Stormont, who *alleged* no process, because the citation was not within year and day of the summons, the warrant whereof, which bears, to cite the defenders to compear the day of next to come.

THE LORDS found the defence relevant.

Fol. Dic. v. 2 p. 178. Stair, v. 2. p. 301.

1665. November 28. BRUCE against Earl of MORTOUN.

No 21.
Continuation necessary in a summons of furthcoming.

IN an action for making arrested sums forthcoming, between Bruce and the Earl of Mortoun,

THE LORDS found that the summons behoved to be continued, seeing they were not passed by a special privilege of the LORDS, to be without continuation, albeit they were accessory to the LORDS' anterior decret, against the principal debtor, which they found to be a ground to have granted the privilege of not continuation, if it had been desired by a bill, at the raising of the summons, but not being demanded, they found *quod non inerat de jure*.

Fol. Dic. v. 2. p. 178. Stair, v. 1. p. 315.

No 22.
Continuation not necessary in a summons of declarator of bastardy; but on a single summons it may be proved, that the defunct was a reputed bastard.

1670. June 15. LIVINGSTON against BURNS.

MARGARET LIVINGSTON, as donatrix to the bastardy of a mason in Falkirk, pursues a declarator of the bastardy, and restitution of the goods against Burns, who *alleged*, No process, because the libel, condescending upon the bastard's father and mother's names, and that the defunct was bastard, the same must be proved by witnesses, and so the summons must be continued, it being a known maxim, that all summonses, not instantly verified, either by presumption, or probation