*** Stair reports this case:

No 15.

WALLACE pursues a declarator of property and right against Purves, for declaring the right of a tenement of land in Edinburgh, and of a well belonging thereto.—The defender *alleged* no process, because he was only cited upon six days, whereas declarators require twenty-one days. —It was *replied*, That the Lords, by their deliverance, had privileged the summons to be upon six days.—It was *answered*, That the said privilege was not past by the Lords, *ex certa scientia*, but of course, as a common bill, without reading, and so was *periculo petentis*, and not being consonant to law, is null.—The pursuer *replied*, That though it might have been the fault of the writers or clerks to have inserted such a privilege, yet being granted, and used by the pursuer *bona fide*, it ought to stand, being past upon this special consideration, that both parties dwelt in Edinburgh, and that many more days had intervened before it was called.

THE LORDS sustained not the privilege, but ordained the writer of the summons to receive a reprimand, and appointed an act of sederunt to be intimated to them and the clerks, that no such privilege should be inserted in bills for any summons, except for such particular summonses as are mentioned in the act; for they considered that 21 days was little enough for defenders to fit themselves for their defences.

Fol. Dic. v. 1. *p.* 465. *Stair, v.* 2. *p.* 84.

No 16.

1700. *July* 18. DUNDAS of Manner *against* HARDY.

MANNER having fined Mr Willam Kintore for sundry absences from the head courts of the shire of Linlithgow; and having summarily poinded the tenants for the amerciament; and alleging that suit and presence being in the *reddendo* of the charter, it was of the same nature with the feu-duty, and might have summar execution; else, what if the heritor dwell in another shire, the King's head courts may become desolate; yet the LORDS did think this procedure to poind the tenants precipitant, without a previous decreet of poinding; and without deciding whether these laws were *debitum fundi* or not, they found the poinding illegal, and the bond granted to stop it null; and reponed the master and tenants to their defences. See VIS ET METUS.

Fol. Dic. v. 1. *p.* 466. *Fountainhall, v.* 2. *p.* 105.

No 17.

A person was cited before a Commissary, upon two or three days. The Lords refused to advocate the

1701. *December* 23. BALFOUR *against* HAY.

MR JAMES BALFOUR of Randerston pursues Peter Hay of Leys before the Commissary of St Andrew's, for scandalizing and defaming him, by saying in some companies that Randerston had forged and put to his subscription to the

juncture and margin of a retrocession; and therefore craves that he may stand in sackcloth at the kirk door, and sit on the repenting stool, and at the market cross crave him pardon, and pay him L. 3000 of a pecuniary mulct. Leyes advocates on this reason, that the Commissary had shown both partiality and iniquity; that he had issued out an order to cite him on two or three days time, whereas, by the 19th act of Parliament 1621, inferior judges are ordained to issue out citations on 15 days citation, and the act 72d 1540 imports the same. —*Answered*, The said paragraph does not seem to be an act of Parliament, but only an act of Council; but, however, it is utterly in desuetude, and the Commissaries make their days of compearance shorter or longer according to the party's distance, and here Leyes was personally apprehended within the burgh of St Andrew's.——THE LORDS found the act in desuetude, and therefore repelled the reason of advocation, and remitted the cause back to the Commissaries, who are judges *in prima instantia* to scandals. Some were for remitting it with instruction, but it was thought, if he exceeded, the Lords could rectify it upon new application to be made to them afterwards.

No 17. cause, but allowed him eight days to propone defences.

On a bill by Leyes, the LORDS remitted it with this direction to the Commissary, to allow him a competent time to propone defences, and that it be not under eight days.

Fol. Dic. v. 1. p. 466. Fountainhall, v. 2. p. 132.

1706. *January* 17. JAMES BALFOUR *against* LORD PITMEDDEN.

No 18. A party was charged with horning on six days, on a decree-arbitral which mentioned no days, but only the words, 'in form as 'effeirs,' which imports 15 days; but the submission mentioned six days. Found, that the charge on six days was proper.

JAMES BALFOUR merchant in Edinburgh, gives in a complaint against my Lord Pitmedden, that he had charged, denounced, and registrate him upon a decreet-arbitral, determining their shares in the powder manufactory, upon six days; whereas the decreet bore 'in form as effeirs,' which imports that it behoved to be on 15 days, as all other decreets are, especially seeing he was no subscriber of the submission; and therefore craved not only relaxation, but also that my Lord might be decerned to retire the horning out of the register, or to procure him the gift of his escheat on his own charges, and to repair his damages. ——THE LORDS thought they could not meddle with the registers; but appointing the bill to be seen, it was *answered* for Pitmedden, That his being in the north hindered his signing of the submission, but he accepted and homologated the same now, which was equivalent to signing; and the raiser of the letters of horning was sufficiently warranted to make the charge to pass on six days, because the submission bore that time, and the decreet-arbitral, though in general terms, must be regulated thereby; for though judicial sentences charged on require 15 days, yet that is no rule for decreets-arbitral; and though in the case of Graham of Balgowan and Campbell of Boghole *, the horning was found unwarrantable, yet that does not meet this case, where the money only lay in Balfour's hand, as trustee and depositary, being treasurer to the

* Examine General List of Names.