

No 18.

company and their servant, and his applying it to his own use was a *species furti*; and if he by his wilfulness in keeping up the money, has brought himself into the briers, *sibi imputet*; for law says, *Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire*.—THE LORDS found the charge in this case might warrantably proceed on six days, and therefore refused the desire of Mr Balfour's bill, but allowed him to suspend and relax, having now made payment.

Fol. Dic. v. 1. p. 466. Fountainhall, v. 2. p. 313.

No 19.

1710. July 29.

FAIRHOLM against M'KENZIE.

WHEN tutors and curators are cited edictally in a process against a minor, though they be out of the country at the time, there is no necessity that they be cited upon 60 days and 15 days; and the minor will not be indulged farther than the common *induciæ legales*.

Fol. Dic. v. 1. p. 465. Forbes.

* * * This case is No 41. p. 3709. *voce* EXECUTION.

No 20.

1732. December.

FULLERTONS against HUME of Slate-house.

A DECREE of certification, in a reduction and improbation, was recalled upon the 20th article of the regulations 1695, which requires that certificates in absence shall remain unextracted for the space of four weeks after pronouncing. Here it was understood to be in absence, a procurator being marked by the clerk at random, who was not the defender's ordinary procurator. See APPENDIX.

Fol. Dic. v. 1. p. 467.

1735. December 18.

M'QUEEN against STIRLING of Keir.

No 21.

An heritor poiding upon a baron-decree for bygone rent, need not wait the lapse of the ordinary number of days, but may proceed *instanter*.

UPON the 19th of September 1734, Keir took a decret before his baron-court against M'Queen his tenant, whereby he was decerned to make payment to him of a certain sum, as bygone rents, 'within the term of law;' and, in virtue thereof, Keir poided his effects on the 24th of the said month, whereupon M'Queen brought an action of spulzie, against which the defence offered was, lawfully poided.

Answered for the pursuer; That his goods were carried away before the term of law, within which he was charged to pay, was expired.

Keir *replied*, That anciently a custom prevailed of poiding instantly after obtaining decret, either without any charge at all, or before the days were ex-