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.*

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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.

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.

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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 *inducia legales.*

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

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

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1732. *December.* FULLERTONS *against* HUME of Sclate-house.

No 20.

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.

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1735. *December* 18. M'QUEEN *against* STIRLING of Keir.

No 21.
An heritor poinding 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 decreet 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 poinded his effects on the 24th of the said month, whereupon M'Queen brought an action of spulzie, against which the defence offered was, lawfully poinded.

*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 poinding instantly after obtaining decreet, either without any charge at all, or before the days were ex-