

* * 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 William Kintore for sundry absences from the head courts of the shire of Linlithgow; and having summarily poinded the tenants for the amerciamento; 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 decret 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