INDUCIÆ LEGALES.

1776. *December* 13. RENNIE, Petitioner.

THE Lords, in the case of second adjudications, are in use to dispense with the second diet in the summons, in order to bring the second adjudication within year and day of the first. But they never dispense with the first diet. A case occurred where a first adjudication had been pronounced, 13th December 1775. A second summons, upon two diets of twenty-one and six days, was executed, 22d November 1776, so that the first diet run to the 13th December 1776. This was the narrowest case that could well be; however, as it is now established that a summons can be called on the day of compearance, in this case they granted the usual warrant for calling, enrolling, and decerning in the second adjudication, without abiding the second diet.

1776. *December* 14. AGNES PEADIE and FACTOR, Petitioners.

THE Creditors of a defunct, doing diligence to affect his estate within three years after his death, are preferable to the Creditors of the apparent heir. This preference is founded on the Act 1661, c. 24, which proceeds upon a narrative, "That it is just that every man's own estate should be first liable to his own debt, before the debts contracted by his apparent heir." But although thus far the Creditors of the defunct are in a more favourable case than those of the apparent heir, yet if they have delayed so long to bring an adjudication against the predecessor's estate, as not to leave time to obtain decreet within the three years, without dispensing with the *inducie legales* of the summons, or the *inducie deliberatoriæ*, or other forms of Court, the Lords will refuse to do so. In this case the favour of a *pari passu* preference of Creditors, which is the great argument for dispensing with forms in a second adjudication, is reversed, and turns directly the other way. And therefore Agnes Peadie having raised a summons of adjudication, upon one diet, against an apparent heir furth of Scotland, in order to obtain a preference upon the predecessor's estate above the creditors of the apparent heir,—and the *inducie* not expiring till the 11th of January 1776, which fell within the period of the Christmas vacation; the Lords, (14th December 1776,) refused to give her any relief. They could have altered their adjournment, or perhaps authorised an Ordinary to sit, and to decern in it; but they would do neither. They considered the case as they would have done had there been no vacation. Although that had been the case, and that the summons had been called on the 11th of January, they thought it behoved to have awaited the ordinary forms of giving out to see, and enrolling, and so could not have been decerned in, till the three years

were expired. Besides, they doubted if one diet in such a summons of adjudication was sufficient; (see Form of Process.) They thought it was not, being confessedly a *first adjudication;* and, further, that, if the debtor compeared and took a day to produce a progress, there was neither law nor equity in refusing him that alternative.

They refused the petition unanimously.

1768. *June* 18. M'LEAN, Petitioner.

IN this case the Lords granted warrant to enrol a second adjudication, although the second diet was not run. It was to bring it within year and day of a first adjudication. The year was run, but not the day.

A SUMMONS, having been raised against a person furth of Scotland, was executed at market-cross of Edinburgh, pier and shore of Leith, and an arrestment raised and executed on the dependance. The pursuer, not adverting sufficiently to the *inducíæ*, caused call the summons before the diets were run; and, having enrolled it, he obtained decreet in absence, which went to the minute-book before the mistake was discovered. When discovered he enrolled the cause; and having stated the fact to the Ordinary, (Lord Ankerville,) his Lordship, (18th February 1777,) recalled the decreet, and allowed the summons to be called of new,—so soon as the *inducíæ* were run. The propriety of this procedure may be doubted.

A SUMMONS, having been raised against two persons, was called only against one of them, and, being enrolled, decreet was obtained. The mistake being discovered, and stated by Lord Stonefield to the Lords, they allowed the summons to be called against the other defender in common form, in order that he also might be proceeded against.