

## INDUCIÆ LEGALES.

### SECT. I.

Whether a summons upon the passive titles can be raised and executed during the running of the days of the charge to enter heir.

1610. February 24. THOMAS GIFFART *against* COILZART of Sheriff-hall

No 1.

A SUMMONS raised and executed against him who is charged to enter heir before the term of the charge of the 40 days be expired, is null and no process will be granted thereupon.

*Fol. Dic. v. I. p. 465. Haddington, MS. No 1825.*

1622. February 8. LESLIE *against* INNES.

No 2.

PATRICK LESLIE having charged one Innes to enter heir upon 40 days. as use is, pursues him thereupon for payment of his father's debt. The defender compearing *alleged*, that that summons could not be sufficient, because the same was raised before the 40 days of the charge were expired, and therefore no process ought to be granted thereupon, seeing it was not lawful to raise the summons till after all the days were expired, after which he might conveniently intent his summons, and no sooner. This allegation was repelled by the LORDS, and the action sustained upon that summons and charge; for the LORDS found, that albeit the principal letters and summons were raised and dated before the 40 days of the charge were run, yet seeing it was not executed, nor the party summoned therewith till the 40 days were completely expired, albeit the letters were raised before the days were past, that the same was sufficient.

Act. Baird.

Alt. Hope.

Clerk, ———.

*Fol. Dic. v. I. p. 465. Durie, p. 152.*