THE LORDS found that the improbation behoved to be continued, albeit the same had an ordinary privilege to pass upon six days, for the first summons, passed of course *periculo petentis*. No 18.

Stair, *v.* 1. *p.* 94.

1665. *July* 14.

Earl of ARGYLE *against* MACDOUGALS of Dumolich and Ziner.

No 19.
A decree of Parliament found null by a multipoinding without reduction.

THE Earl of Argyle having raised a double poinding, in name of the tenants of certain lands, calling himself, on the one part, and Macdougals on the other, as both claiming right to the mails and duties. Macdougals produce a decreet of Parliament, whereby they having pursued the late Marquis of Argyle, *alleging*, That he had obtained the right and possession of these by force, and oppression during the troubles, whereupon his rights were reduced, and they restored to their possession. The Earl of Argyle produced his sasine, upon the King's gift, with two dispositions of these lands, granted to his father, one *in anno* 1632, and another *in anno* 1639, and thereupon craved to be preferred. Macdougals produced a disclamation of the process, in name of the tenants, and alleged no process, because the tenants, who were pursuers past from the pursuit. It was *answered*, That their names were but used, that the parties might discuss their rights, and so they could not disclaim it, being ordinary to use tenants' names in double poindings. It was *answered*, That there was no reason that tenants should be forced to make use of their names to intervert their master's possession.

THE LORDS found, that the tenants could not disclaim, especially the possession being but late, by decreet of Parliament, and was contraverse.

It was further *alleged* for Macdougals, that there was nothing particularly libelled, as rents due by the tenants, and therefore there could be no sentence.

THE LORDS repelled the allegeance, and found the sentence might be in general to be answered of the mails and duties, as is ordinary in decreets conform.

It was further *alleged* for Macdougals, that seeing this double poinding was in effect now used as a declarator of right, no process thereupon, because in all declarators, law allows the defenders twenty-one days upon the first summons, and six on the next, that they may prepare, and produce their rights, and here there is but one summons on six days. 2*dly*, No process, because Macdougal's being founded upon a decreet of Parliament; my Lord Argyle produces no title, but only a sasine, not expressing these lands. 3*dly*, Decreets, especially of Parliament, cannot be taken away, but by reduction, and not thus summarily. It was *answered*, That my Lord Argyle insisted here for taking away the pretended decreet in Parliament, and restoring the King and donatar to the possession of the lands, so that in effect it is not so much a declarator of right as a possessory judgment. And as for the title, it is sufficient to produce a sasine,

No 19. seeing, in the decreet of Parliament, my Lord Argyle's right and possession were quarrelled as wrong, and therefore were acknowledged to have been, and seeing Macdougals produces no other right, and the King's Advocate concurs; and if need be, my Lord Argyle offers to prove the lands in question are parts and pertinents of the lordship of Lorn, expressed in his sasine; and albeit this be pretended to be a decreet of Parliament, yet by sentence of Parliament since, it is remitted to the LORDS, and is in itself visibly null, as having been intented against my Lord Argyle, and pronounced after his death and forfeiture, without calling the King's officers.

THE LORDS repelled these defences in respect of the replies.

Stair, v. 1. p. 296.

1665. *July* 22. THOMAS REW *against* Viscount of STORMONT.

No 20. Summons not sustained, it not having been executed within year and day from its date.

THOMAS REW pursues a reduction of a decreet obtained by the Viscount of Stormont, who *alleged* no process, because the citation was not within year and day of the summons, the warrant whereof, which bears, to cite the defenders to compear the day of next to come.

THE LORDS found the defence relevant.

Fol. Dic. v. 2 p. 178. Stair, v. 2. p. 301.

1665. *November* 28. BRUCE *against* Earl of MORTOUN.

No 21. Continuation necessary in a summons of furthcoming.

IN an action for making arrested sums forthcoming, between Bruce and the Earl of Mortoun,

THE LORDS found that the summons behoved to be continued, seeing they were not passed by a special privilege of the LORDS, to be without continuation, albeit they were accessory to the LORDS' anterior decreet, against the principal debtor, which they found to be a ground to have granted the privilege of not continuation, if it had been desired by a bill, at the raising of the summons, but not being demanded, they found *quod non inerat de jure.*

Fol. Dic. v. 2. p. 178. Stair, v. 1. p. 315.

No 22. Continuation not necessary in a summons of declarator of bastardy; but on a single summons it may be proved, that the defunct was a reputed bastard.

1670. *June* 15. LIVINGSTON *against* BURNS.

MARGARET LIVINGSTON, as donatrix to the bastardy of a mason in Falkirk, pursues a declarator of the bastardy, and restitution of the goods against Burns, who *alleged*, No process, because the libel, condescending upon the bastard's father and mother's names, and that the defunct was bastard, the same must be proved by witnesses, and so the summons must be continued, it being a known maxim, that all summonses, not instantly verified, either by presumption, or probation