

1713. *June 23.*AGNES COLQUHOUN, LADY MONTBODDO *against* The LAIRD and LADY NEWMAINS.

No 35.

A person who inserted in a summons days of compearance that fell within the Christmas vacation, allowed to amend the wrong days filled up.

IN a process of mails and duties, count, reckoning and payment, at the instance of the Lady Montboddo against Newmains and his Lady; the pursuers having inserted the first and tenth days of January last, which fell within the Christmas vacation, for the days of compearance in her summons; the LORDS refused to cast the process upon that head, but allowed the wrong days filled up to be amended. Albeit it was *alleged* for the defenders, That such a favour used only to be indulged, when a summons given out blank in the days is filled up by the adverse party with wrong or unlawful days.

Fol. Dic. v. 2. p. 179. Forbes, p. 687.

1713. *July 23.*GORDON and OSBURN *against* JEAN CAMPBELL and OTHERS.

No 36.

Title to pursue on citation to compear on a day in the vacation sustained where the party had the full number of days allowed for his appearance, in respect the citation bore with continuation of days, which is understood to be the most lawful day thereafter.

IN a reduction *ex capite lecti*, of a disposition whereupon infestment had followed, pursued by Gordon and Mr Harry Osburn, deriving right from Robert Gordon in the kingdom of Ireland, as apparent heir to James Gordon of Newark, against Jean Campbell and others; the LORDS repelled this dilatory defence, that the first day of compearance, to which the defenders were cited, was in the vacation-time, in respect errors in filling up of days of compearance, can be amended at the bar; and the defenders have the full number of days allowed by law. And where the day of compearance happens to be an *unlawful* day, the citation, which bears continuation of days, is understood to be *next* to the lawful day thereafter; but the LORDS found no process, unless Robert Gordon's propinquity to James Gordon be instructed by a service as heir to him, or otherwise. Because, though naked apparency of a person known and born in the country, is sustained to found process, yet action is not sustained at the instance of one born out of the country, unless some document be produced, cognoscing and trying his propinquity of blood to the person whose apparent heir he pretends to be, December 17. 1627, Donaldson *against* Brown, No 9. p. 4647. See TITLE to PURSUE.

Fol. Dic. v. 2. p. 179. Forbes, p. 708.

No 37.

The most irregular charge may be turned into a libel.

1715. *July 30.* ANDREW M'READY *against* MATTHEW CRAWFURD.

ANDREW M'READY having a bill upon Matthew Crawford, payable upon sight, but neglecting to protest the same within the six months, he thereafter