and another of furiosity, taken out against the same person at the same time, of which there was one example; but they found, That there must be distinct claims and distinct retours upon the two brieves: though it was observed, that, by the Act 66 James III., it appears, that formerly there was but one brief both for idiotry and furiosity.

1747. *January* 14. ELECTION PROCESS of WICK.

IN this case, it was decided, That a dilatory exception, such as this, that one of the defenders was not cited at his dwelling-house, or, what the Lords thought the same thing, the place of his ordinary residence, as the summons bore, (which, in effect, was an improbation of the execution,) unless instantly verified, could only be proponed *sub periculo causæ*. This doctrine was founded on the authority of Lord Stair and the nature of the thing; for, otherwise, processes would be endless, if the defender were allowed to go on and demand, first, a proof of one dilatory defence, and then of another.

1747. *January* 16. ——— *against* ———.

Found,—That compensation might be admitted against a decreet in absence. In this case, precedents were searched, and it was found, That it had often been decided otherwise, but that the most and latest decisions were on this side.

1747. *January* 17. INVERKEITHING ELECTION PROCESS.

Sustained this no process, That the names of all the defenders were not mentioned in the executions, but only two of them, with the addition of "and others," which they thought did not come up to what was required by Act 6, 1673.

The like found in the election process of Wick, February 12, 1747.

1747. *January* 17. MONTROSE ELECTION PROCESS.

[Falconer, No. 166.]

IN this case, the President and Lord Elchies declared it as their opinion, that, where the Crown granted a warrant for a poll-election in a burgh, without requiring a report to be made to the King, (which sometimes happened,) in that case the Court of Session had jurisdiction to cognosce upon the poll, be-

cause none but the King's judges can determine whether the directions in the warrant for the poll have been complied with.

1747. *February* 14. KIRKPATRICK *against* IRVINE.

[Falconer, No. 163.]

THE question here was, Whether a retour of church-lands, prior to the 1681, is a good evidence of the old extent. On the one side, it was said, that the reason why the old extent gave a vote at first, was, that it was the rule by which the public burthens were paid. But, in church-lands, that was never the rule; for, notwithstanding the Act 1594, ordaining church-lands to be extended, and notwithstanding the charters of erection bear that the lands erected shall pay taxes, not as church-lands, but as other temporal lands; yet, in fact, it is certain that church-lands never paid by the old extent, but by Bagiment's roll, till the valuation was established; and, therefore, as church-lands were never assessed by the old extent, they properly had no old extent; and, consequently, can give no title to vote by the extent. To this it was ANSWERED,—That, though the Act 1594 did not generally take effect throughout Scotland, yet it might take effect, and actually did, in some parts of Scotland; and where it was executed, and the lands properly retoured, there appears no reason why they should not be entitled to vote. The Lords found, unanimously, (Arniston only doubting,) that the vote in this case was good.

1747. *February* 14. ——— *against* ———.

FOUND,—That, the writing of a bill above a man's subscription to a burial letter, was forgery, and that it was the same thing whether the subscription was adjected to the deed, or the deed to the subscription.

1747. *June* 9. BANK OF SCOTLAND *against* ——.

THE Lords found that a holograph paper, after twenty years, could not prove any fact tending to establish an obligation, and was to be considered in every respect as good for nothing, unless supported as the law directs. This case was put: Suppose a holograph letter or declaration, twenty years' old, produced to instruct that an assignation was in trust; it would signify nothing, though the obligation would not arise in such a case from the paper, but from the trust of which the paper was only a proof. *Dissent. Preside; Assent. Arniston, Elchies, Drummore.—Actor Craigie, Alter Ferguson.*