

No 9.

tion not having been called within a year after elapsing of the last diet of compearance, it expired, and the instance perished; for my Lord Stair; Institutes, *Lib. 4. Tit. 34. No. 4.* allows wakening after the year only, when the process has been called within the year; and denunciation cannot proceed upon a charge of horning after year and day. It was decided 27th July 1708, Drummond against Stewart, *voce* PROCESS, that a summons not called within a year of the day of compearance expired, so as it could not be awakened; and November 7th 1684, Belshes *contra* Earl of Loudon, *IBIDEM*, the LORDS found no process upon a summons not called within year and day after the days of compearance, and found that the instance perished, and could not be wakened; *3tio*, The LORDS will sustain a summons for interruption, upon which they would not sustain process, as was lately decided in the case of Forbes of Tolquhon, *See* PRESCRIPTION.

*Duplied* for the suspenders, If *vitium litigiosi* were only contracted after a summons is called, he who is master of an unjust bond may, how soon he finds himself attacked by a citation, assign the bond, and so disappoint the debtor's just objections against the cedent; *2do*, The 9th act, Parliament 1669, supposeth that every citation that would have made an interruption may be wakened within five years.

*Triplid* for the charger, *imo*, *Incommodum non solvit argumentum*; besides, it would be a greater *incommodum* to commerce, to make an assignee for an onerous cause lose his money upon such a pretext; *2do*, The act 1669 must be understood *in terminis juris habilibus*, *viz.* that the causes to be so wakened were called in due time; and the stile of a summons of wakening is, that the Judge should proceed where he left off; but *in simplici postulatione*, or citation, *nulla pars judicis*.

THE LORDS found, that a summons executed only, and lying over for year and day, without a calling, was not competent to found the exception of *res litigiosa* against an assignee for an onerous cause.

*Forbes, p. 308.*

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1713. July 23.

JOHN BLACK, Merchant in Dumfries, *against* AGNES LINDSAY, Relict of  
JOHN LAWSON of Bilbow.

No 10.

IN a process at the instance of John Black against Agnes Lindsay, as vitious intromitter with the moveables of John Lawson, her deceased husband, for payment of L. 40 Sterling, owing by him to the pursuer; the LORDS found the defender, who intromitted by virtue of singular titles, liable *in valorem*, her intromission having been by virtue of no valid title; and that she could not affect the subject, *pendente lite*, by confirmation, in prejudice of the pursuer.

*Fol. Dic. v. 1. p. 552. Forbes, p. 708.*