

1776. December 14. AGNES PEADIE, Petitioner.

LORD Stair, p. 582, says, that adjudications on the Act 1672 may pass upon a summons of one diet, of six days, where parties are near. Lord President and Lord Braxfield, in considering a petition of Agnes Peadie, gave it as their opinion, (14th December 1776,) that this, of one diet, could only be followed in second adjudications, but that all first adjudications, on the Act 1672, behoved to be on two diets, with the common *induciæ*.

See INDUCIÆ LEGALES.

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In the same petition, it was held *as established*, that it was not a no process to make the diets of compearance fall in the Christmas vacation:—and it was not controverted. This was repelled by Lord Elliock, 28th February 1771.

A dilator of this sort repelled by Lord Justice-Clerk, 28th July [1774, in a reduction of a decret of the Commissioners of Supply of Clackmannan.

See Forbes, 23d June 1713, *Colquhoun*; and 23d July 1713, *Gordon*.

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1775. June 15. FEUARS of CAMELAS *against* PROPRIETORS of CLYDE NAVIGATION.

LORD Kilkerran, p. 316, marks a decision, where the Lords found, that, in a question concerning the jurisdiction of the Court, the reclaiming days did not run. This decision was approved, and held to be law 15th June 1775.

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ELECTIONS OF WICK.

A DEFENDER proponing improbation of the executions, must do it *in initio litis*, and, further, must do it *peremptorie*, March 1773, see Dict. Vol. II. p. 186, *Jameson against Hay*. Contrary, 28th November 1744, *M'Lauchlan*.

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1772. December 4. MACNEILL *against* BUCHANAN.

It was objected to a decret of adjudication, that the special charge on which it proceeded was only narrated in the libel, but not mentioned in the production of the decret; and, as the extract is the proper record, it must be held as in truth not to have been produced. But the Lords found that this

presumption might be overbalanced by stronger contrary presumptions ; and that if, in fact, the special charge was produced, this was sufficient, though omitted to be so said in the extract of the decret.

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1773. December 15. MISS BRUCE *against* CARSTAIRS.

A PARTY who compears in process, and propones peremptory defences, cannot withdraw his appearance : any decret pronounced against him is understood to be a decret *in foro*. See regulations 1672. The point occurred in the case betwixt *Miss Bruce of Arnot* and *Mr Bruce Carstairs*. At giving expenses, by the Ordinary, the procurators for Mr Carstairs were absent, neither did they represent within the representing days. But they represented after these days were run ; whereupon Lord Kaims, Ordinary, recalled his decreture for expenses, holding it to be a decret in absence. But the Lords were of a different opinion, and held it to be a decret *in foro*, (15th December 1773.) At the same time, though they held the decret fast in point of form, yet they modified the *quantum* of the expenses very low, (for these had not been modified by the Ordinary ;) being convinced that the Ordinary ought not to have given any.

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1777. January 17. JOHN WALSH *against* CREDITORS of MR ROBERT M'INTOSH.

JOHN Walsh, Esq. having advanced, from time to time, to Mr Robert MacIntosh, advocate, a sum betwixt L.25,000 and L.30,000, to be laid out in purchasing in certain debts of the York Building Company, took from Mr M'Intosh receipts for these sums on loose slips of paper, which he produced in Chancery, in a suit at his instance against Mr M'Intosh.

Afterwards, finding that Mr M'Intosh had an estate in Scotland, he was advised to bring a constitution of the debt against Mr M'Intosh before the Court of Session, wherein he libelled upon these receipts ; and the summons was executed edictally. When called, Mr M'Intosh, in absence, was held as confessed, and decret went out against him. But neither at pronouncing decret, nor at extracting, were the receipts produced in the clerk's hands : not only for the reason already given, *viz.* that they were produced in the suit in Chancery, but that Mr Walsh was shy to trust them in Scotland, for fear of accidents, the sum being great.

The decret of constitution being extracted, adjudication followed ; and, in the process of adjudication, nothing was produced except the decret of constitution.

Upon this interest Mr Walsh, being infeft, by charter and seasine, on Mr M'Intosh's estate, brought a process of ranking and sale thereof against him and his Creditors ; and, in the ranking, it was objected to the decret of consti-