

quells, will be sustained, albeit they be out of Curators or out of Scotland, and not cited upon 8 & 15 days 29 July 1710 Fairholme contra M. Lenzie of a kind. But one diet of 6 days sufficient for summons to be put out by Curators or Curators summoned from town also but one diet: in some whereof Citation must be given to that diet upon 21 days in others upon 15, as recent Spuiliest act 69 Parl. 6 & 7 Recent Elections Jurisdictions and Succession in the Vice, which are of the Nature of Spuiliest in Inmovable, and in others upon 6 days Act of Decr. 24 July 1672 as removing, caused a Clerical, Episcopical, Summons for making beneficed goods fourth coming, want forings, poundings of the Ground, Wakenings, Special Delators, suspensions, seven ~~108~~ and branchments. But a Summons of Alment should have two diets when it requires a term to prove. 13 July 1708 Elephant contra Elephant 21 Feb. 1712 Stuart contra Menzie. Tho' the Action must be summarily discussed Act 21 Feb. 6 Parl. N. W. In all Citations, either the days upon which they are given, or the days of Comparance, must be free, and not reckoned in the Number of days thereof being given. lib. 2 Feb. 9 52 M<sup>r</sup> Jeanie before, on Act 94 Parl. 6 J. P. Tho' the days be other way computed in a Warning to remove Act. sup. pag. 757. Question of Sessions. M. Lenzie v. b. d.

The Defendor is cited to appear before the Lords of Session at Edinburgh, or where it shall happen him to be for the time; because before Institution of the Roll of Justice, the Session was Ambulatory and followed the Court, sitting sometimes at Edinburgh, sometimes at Stirling, Perth or Inverland as the King pleased, and the Ancient Right is still retained. But while the Court of Session is now fixed at Edinburgh, it is not necessary to mention the place, unless the King should appoint it to sit elsewhere stat. lib. 4 Feb. 38 & 13. The Citation orders to appear in the hour of Cause; that is when the Summons is called, but the Continuation of days, that is the Summons may be called not only upon the Particular day of Comparance, but also on any other day within a year thereof: for diets before the Session are not compulsory as those in the Court of Justice, where if Summons be not called on the precise day in the Citation, perit Inst. Stat. and a new Summons must be taken.

Citation is said to be given with Certification, that is an Indication of what the Lords will do, if the Defendor fail to appear. Certification in a Summons (which is the thing thereof to make it Effectual) is so called, because the party cited is thereby certified and ascertained what the Lords will do in case he compare not; and signifies to what it is termed Commencement by the Doctors of Law. Certification is either General

General or special. A General Certification, that the Lords will proceed to do Justice as the Cause or did appear, which is sufficiently Express when the Summons bears with Certification, and the third word be omitted is Implied, as when the Summons bears to cite the Defendor to hear and be heard and declared, or to hear and see the premises Verified and proven, and them to be Decreed; It is Implied, that the Lords will proceed to do Justice against them; or when a Bear to cite the Defendor to compare, it is Implied, that they, if personally cited, will be read as Confessed. For this Certification is more an Act of Justice, than penal. A special Certification varies, according to the Nature of several Kinds of Summons, &c. The Certification in a simple Redaction is, that the writs called for will be reduced, till they be provided: the Certification in a Redaction and Improbation is, that if the writs called for be not produced, they shall be held as false and forged &c. Even in other sorts from the Law of England, that the Common Certification in English is, that the party cited and not appearing shall be outlawed: for they cannot proceed to give sentence against any in Absence. Wherein the Court of Session or upon the Defendor being held as Confessed, when the Certainty of Matters is referred to his Oath, Law presuming, that he desires to appear and compare, because he is conscious of the truth here of. Primarily the Matter of Fact is set forth before the Will of a Summons: But some Summons are a Kind of Redaction of the Will of Execution of Decree, as of Non-entry &c. begun at the Will, and then proceed to the purpose intended. As if a Decree for the King's command to cite the Defendor in whose favour the right to be Decreed is granted, and generally all other persons having Interest, to answer at the Instance of the Complainer, which right is then specified, to bring in within the days called for, which are still and reducible for such and such reasons. The Reason why Summons of this kind begin at the Will is: because the King therein interposes his Extraordinary power, and some thing is to be done by the Defendor previous to sentence, viz. in a Redaction he is to Examine and produce the writs, whereby the Complainer is favoured; and in a simple Redaction, est ante omnia Redactiones; Or, perhaps the Will is proposed in these Summons, because that Style thereof is more precise and Determined, strictly, the Will of a Summons Containeth a warrant to cite the writs, for ~~which~~ where the Summons was to be proved by witnesses, for whose Names a Blank was left. But that has some great Inconvenience, when Causes could not be Debated and Determined at the term to which they are called were cited, and then when Act is Contested, it is made, and terms