

No 40.

THE LORDS found this action not competent at the instance of so many pursuers, but allowed the process to proceed at the instance of any one of them, and ordained the procurators for the pursuers to make their election.

And, upon a reclaiming petition and answers, the LORDS adhered, with this qualification, that where one or more persons complain of the same act, or acts of oppression, whereby he or they were affected, they may maintain their action upon this summons.

C. Home, No 167. p. 281.

No 41.

1743. *January 12.* BEGBIE *against* ANDERSON.

WHERE the decree of an inferior court was in a suspension turned into a libel, the LORDS would not suffer the libel to be amended or added to, because the decree was the libel; which being the record of the inferior court, could not be altered.

Fol. Dic. v. 4. p. 147. Kilkerran, (PROCESS.) No 4. p. 434.

* * * A similar decision was pronounced, 6th July 1779, Watson *against* Stijl. See APPENDIX.

No 42.

1745. *February 13.* DICKSON *against* GIBSON.

THE LORDS found no process against a man cited by a wrong Christian name.

Fol. Dic. v. 4. p. 146. D. Falconer.

* * * This case is No. 235. p. 8859. *voce* MEMBER OF PARLIAMENT. A similar decision was pronounced, 6th July 1753, Dalglish *against* Hamilton, No. 9. p. 4163. *voce* FALSA DEMONSTRATIO.

No 43.
There is no need of summoning the heirs of a litigant, who appealed and died, on the cause being

1745. *June 20.*

LORD ARCHIBALD HAMILTON *against* The Countess of RUTHERGLEN and Earl of MARCH.

LORD ARCHIBALD HAMILTON brought an action against the Earl of Selkirk, in which several interlocutors were pronounced, from some whereof Lord Archibald appealed.

The Earl of Selkirk died, and the Countess of Rutherglen and Earl of March, as deriving right from him by deed to the subject in controversy, appealed from

other of the interlocutors, and Lord Archibald also called them as parties to the discussing of his appeal.

The House of Peers reversed all the procedure, and remitted to the Lords of Session to re-hear the cause; and Lord Archibald gave in a petition, craving they might proceed, to which the Lady Rutherglen and Earl of March answered, That no procedure could be had against them till they were summoned.

THE LORDS found, That the Countess of Rutherglen and Earl of March, not being parties in the original cause, were not obliged to answer to any conclusion in the libel, except the articles in the said libel, upon which they brought an appeal against the petitioner, without the process were transferred, and they made parties thereto by a proper summons, although being made parties to the appeal brought by the petitioner, they appeared therein as respondents; but found the Countess of Rutherglen and Earl of March, by lodging an appeal against an interlocutor of the Court, did thereby make themselves parties, and that there was no necessity to summon them with regard to any article determined by that interlocutor.

Act. *Graham*, sen.

Alt. *R. Craigie*.

Clerk, *Forbes*.

Fol. Dic. v. 4. p. 147. D. Falconer, v. 1. p. 106.

1749. *January 4.*

BLACKWOOD *against* the other CREDITORS of the deceased Sir GEORGE HAMILTON of Tulliallan.

IN a reduction at the instance of Mr Robert Blackwood of Pittreavie, advocate, of the extracted decree of ranking of the creditors of Sir George Hamilton upon the estate of Dudhope, and of the sale following thereon, it was debated, how far, by the law and practice of Scotland, an extracted decree can be reduced *ob instrumentum noviter repertum*, and upon proper evidence of its being *noviter veniens ad notitiam*, but not determined.

But another point was determined, which had the same effect as to the pursuer. The title in the process of ranking was an adjudication at the instance of John Peat, who died without issue; whereby his adjudication fell to Janet and Margaret Hepburns, his two nieces, Janet the eldest married to Thomas Miller in Bothwell, and Margaret the youngest married to John Miller in Hamilton. Janet had died long before the commencement of the process of ranking, yet, by inattention in the agent, the process was raised, not in the name of Margaret, the living sister, but in the name of Janet, and Thomas Miller in Bothwell her husband.

And upon that ground, the LORDS at first, by their interlocutor, 1st July 1748, "found the whole proceedings void, in respect their was no pursuer;"

No 43.
returned to the Court, but it is otherwise if the other party appealed, though the heir answered.

No 44.
A summons of ranking and sale being raised in the name of a dead person, the Lords did not find the decree proceeding on it null, but opened it, so far as to allow one of the creditors to be heard on a new production.