

No 44.

competed ; and the interest on which the summons was raised, falls without the price.

There was a real pursuer, John Peat was an adjudger, and left his interest to Janet and Margaret Hepburns his nieces ; Janet died, but Margaret applied to a lawyer for his advice how to recover her debt, and he recommended her to a writer to the signet, who raised a summons for her, but by mistake gave her the name of Janet ; so that it is only a misnomer, which ought not now to be allowed to be objected to, for annulling the whole procedure.

Answered ; Here was no misnomer, but the summons raised in name of the dead sister, as appeared by her being designed from her husband's name and designation ; so that there was no summons, and the process could not be supported by the appearing and pleading of the parties, more than if they had come into court by a simple appointment amongst themselves ; the case is of no general consequence, being of a very particular kind, differing from that of a creditor's dying, pending process, where there was a foundation for the action ; and if any nullity supervened, the sanction of the regulation might apply.

N. B. A proof was brought, that Margaret Hepburn, relict of John Miller, did give authority for diligence to recover her debt ; whereupon the process was raised in name of Janet Hepburn, relict of Thomas Miller.

THE LORDS found, that the decret of ranking was not void and null ; but sustained the reason of reduction, of this process of ranking's being raised in the name of Janet Hepburn, so far as to entitle Mr Blackwood, the pursuer, to be heard to dispute upon his infetment, notwithstanding the extracted decret of ranking, and of his compearing and competing therein ; and found that the said reason of reduction, founded on the nullity of the name of the pursuer, did nowise affect the decret of sale.

Reporter, *Elchies.*Act. *Lockhart.*Alt. *R. Craigie & W. Grant.*Clerk, *Kirkpatrick.**D. Falconer, v. 2. No 25. p. 31.*

No 45.

1749. *July 26.*

M'AULAY, Petitioner.

It is usual where both diets of compearance in a summons of adjudication are run, but that by the usual forms of Court, the summons cannot be got enrolled in time to get decree within year and day of a former adjudication, to grant warrant to the keeper of the rolls, to enroll the summons forthwith at the head of the roll.

But an application for that purpose was in this case refused, where both diets of compearance were not run, that being thought to be too wide a step.

Kilkerran, (PROCESS.) No 11. p. 438.