

THE LORDS, notwithstanding, ordained the summons to be continued, being of that importance as to take away the property, which is conform to the form of process prefixed to Sir Thomas Hope's practicks.

No 24.

*Gosford, MS. No 526. p. 279.*

1676. July 26.

BOYD *against* BOYD.

No 25.

A CONSTITUTION and adjudication sustained in one summons.

*Fol. Dic. v. 2. p. 180. Stair.*

\* \* \* This case is No 1. p. 188, *voce* ADJUDICATION.

\* \* \* In a case, 16th July 1678, Courty against Stevenson, No 112. p. 2237, *voce* CITATION, it was found, that a decree *cognitionis causa*, and an adjudication, might be sustained in one summons.

1684. November.

BELSHES *against* LORD LOUDON.

No 26.

FOUND, That a summons not being continued within year and day (when continuations were in use,) the instance perished.

*Fol. Dic. v. 2. p. 179. Harcarse, (SUMMONS.) No 911. p. 256.*

\* \* \* P. Falconer reports this case:

MR JOHN BELSHES of Tofts having pursued a declarator against the Earl of Loudon and his Trustees, for extinction of an apprizing, deduced at the instance of Mr John Livingston of the estate of Loudon, whereto the said trustees had right; it was *alleged* for the defenders, That there could be no process upon the summons, because the same was continued several years after the days of the first summons were elapsed, and that after year and day, the instance perished, and the summons could not be continued. It was *answered*, That the continuation was equivalent to a wakening. It was *replied*, That the stile of all summonses was, to compear the day of next to come, which imported the day of compearance behoved to be within the year, and consequently the continuation. The Lords found no process upon the said summons, the same not being continued within the year after the days of compearance, in which case, they found the instance perished, and so could not be wakened.

*P. Falconer, No 93. p. 64.*