

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