

ever, by name or designation, but in these general-terms, ' the Governor and ' Company.'—*Answered*, The defenders are a body corporate, named in their charter in the terms they are summoned, and authorised to sue and defend in that character, and are thus designed in the contract libelled.—This was pleaded to difference the case from that of a burgh royal, in whose contracts the Provost, Bailies, &c. are expressed by name, and so ought to be cited by name.—THE LORDS repelled the objection, and sustained process. *See APPENDIX.*

Fol. Dic. v. 1. p. 268.

No 134.

1747. July 8. BURGESSES OF RUTHERGLEN *against* PROVOST LEITCH.

A PETITION and complaint being given in against the procedure of the Provost of Rutherglen, and others, in taking a poll of the unincorporated burgesses, for choosing eight persons, out of whom four were to be chosen by the Council, to be upon the Council for the current year, in virtue of a warrant of the Lords, as the election of eight made at Michaelmas had been set aside; it was *objected*, No process could be sustained, in respect the whole names of the pursuers and defenders were not insert in the executions, in terms of the act 6th, Parl. 1672.

Answered, The act regards only summons, not summar complaints.

THE LORDS, 4th instant, ' repelled the objection.'

Pleaded in a reclaiming bill, This objection was sustained in the case of a summar complaint, 20th January last, Councillors of Inverkeithing against Mr John Cunningham*.

THE LORDS refused the bill.

N. B. An act was extracted before presenting the petition.

D. Falconer, v. 1. No 197. p. 263.

No 135.

A summary complaint against Magistrates of a burgh, was cast, in respect the whole names of the pursuers and defenders were not insert in the executions.

1748. February 10.

FORBES and Others, *against* The EARL OF KINTORE and Others.

THE Earl of Kintore, Forbes of Craigievar, and others, had long enjoyed, in form of a society, a conjunct possession of fishing salmon in the river Don, by means of cruives erected in that river; when they were attacked by Lord Forbes, and other heritors, upon the upper part of the river, concluding in their process, that the defenders should demolish their cruives, damages, &c. A no-process was *objected* upon the act 6th, Parl. 1672, to wit, that, in the execution against William Brebner, one of the defenders, none of the other defenders were mentioned.—*Answered*, That neither the statute nor any practice hitherto observed, requires that where a summons is executed at different times against several defenders, every execution ought to recite the names of the whole defen-

No 136.

An action against possessors of a salmon fishing was dismissed, because, in the execution against one of the defenders, the names of the others were not mentioned.

* Not reported.

No 136.

ders; witness, processes of ranking and sale; improbations against creditors; processes against debtors, and others of the like nature; where the practice is to name only that single defender who is cited in the execution.

THE LORDS sustained the objection upon this ground, that the defenders were all connected together, and that it was necessary to call every one of them in the process. But it was the opinion of the COURT, that in a process against several defenders, having no connection with each other, the objection is not good. For there, though all the parties be called in one summons, yet the case is the same as if there were as many different processes as there are different defenders, in which case there must be an execution against each of the defenders separately; and, the bringing them all into one summons, makes no difference as to this point.

In this cause, the LORDS were of opinion, though they had no occasion to give judgment, That sustaining the objection of all parties having interest not being called, must have a further effect than barely to sist process till the party left out be brought into the field, by a new process to be conjoined with the former; that it must have the effect to cast the process altogether, leaving the pursuer to bring a more regular process. And this seems to be agreeable to the forms of the Court; for, if a party be not bound to answer, in respect that all parties having interest are not called, nothing remains but that he be dismissed from attending the Court.

Rem. Dec. v. 2. No 87. p. 145.

S E C T. X.

Executions which require not the Ordinary Solemnities.—Form of arresting a Ship.—Verbal Citation.

1634. July 11.

HAY against GICHT.

No 137.

A citation of a tenant to his master's Baron-court may be proven by witnesses.

IN a reduction of a decret obtained by the L. Gicht, against one Hay, his tenant, in his own Court, for payment of farms confest resting owing by Hay, upon this reason, because the tenant was never cited, and there was no citation nor execution extant to qualify the same; in this process the Bailie, pronouncer of the decret, and the clerk thereto, and the officer, executor of the poinding execute thereupon, being called, and being all deceased now *lite pendente*, before this process was discust, whereby the defenders *alleged*, that the process should cease, while the same were transferred in some person to represent them; this allegiance was repelled, and the LORDS found no necessity of transferring;