

1750. *January 6.* MONTGOMERY *against* CREDITORS OF MAXWELL.

No 46.

A RANKING and sale having proceeded so far that the lands were put up to roup, the pursuer of the sale died. Another creditor petitioned for warrant to carry on the process. It was doubted, whether the representatives of the last pursuer should be called. THE LORDS found there was no necessity for doing so, as there could be no farther litigation.

Fol. Dic. v. 4. p. 147. Falconer.

* * * This case is No 118. p. 2240. *voce* CITATION.

1751. *June 21.* JOHN CUMING *against* GRANT of Glinbeg.

No 47.

JOHN CUMING, eldest son to Alexander Cuming, writer in Duthill, pursued William Grant of Glinbeg, for L. 1000 Scots, contained in a bond granted to the said Alexander and his heirs-male.

Objected, No process, in respect the first diet in the summons was not twenty-one days after the execution.

Answered, Whatever the necessity was formerly, when there were two executions, it seemed sufficient now, if the defender had twenty-seven days; and the second diet indulged him in this case with a longer time.

THE LORD ORDINARY, 13th June, "found no process."

THE LORDS refused a bill, and adhered.

A summons, whereof the first diet was not 21 days from the execution, tho' the second was more than 27. was not sustained.

Pet A. Pringle.

Fol. Dic. v. 4. p. 146. D. Falconer, v. 2. No 210. p. 252.

1752. *July.* LOCKHART *against* The MAGISTRATES OF LANERK.

No 48.

It was objected by the Magistrates and Town-council of Lanerk, to a summons of declarator of astringtion pursued against them by John Lockhart of Lee, that the summons did not contain the names of the several persons that composed the Town-council, and only bore in general, the Bailies and Town-council.

This was by the Ordinary repelled, in respect it was not alleged, but that the name of every one of the Town-council was contained in the execution; and the defenders acquiesced.

A summons never bears the particular names of the Magistrates or Counselors, but in general, the Magistrates and Town-council; and though the stile in this case was the Bailies and Town-council, that was immaterial, as the general term *Town-council* comprehends the Magistrates. The case is the same

The term of libelling and executing a summons against a magistracy and town-council.