

1798. July 3. JOHN CADDELL *against* JOHN JOHNSTONE.

No 63.

Action sustained, where the summons called in Court was not that which had been executed against the defender, but a duplicate of it, bearing the same date, afterwards stamped at the Signet.

ON the 8th November 1797, a summons was executed at the instance of John Caddell against John Johnstone, as printer and publisher of the Edinburgh newspaper called the Scots Chronicle, concluding for damages on account of an alleged libellous misrepresentation of his conduct, as Deputy-Lieutenant of the county of Haddington, which appeared in that newspaper.

This summons passed the Signet on the 4th November; and, in terms of a regulation of the Society of Writers to the Signet, of 30th November 1789, a note of the nature of the action, names of the parties, and of the writer who subscribed the summons, was recorded.

Several weeks after its execution, a writer to the signet, acting for the pursuer, different from him who had subscribed it, sent a duplicate of it to the Signet-office, along with the original; where, after comparing them, the clerks stamped the duplicate, which bore the same date with the first copy, from which the stamp of the Signet was torn, in their presence.

The granting of the duplicate was not mentioned in the record, and it was not executed against the defender.

It was this duplicate, which *ex facie* appeared to be an original summons, which was called in Court; and the execution of the original was produced along with it.

The first copy was produced in the course of the action.

The defender offered to prove, that the original summons had been raised at the desire of the county of Haddington, without authority from the pursuer; and contended, that what the pursuer called a duplicate, was in reality another summons, afterwards made out by his own agent, with a view to conceal this circumstance; and, that it would be a dangerous precedent, to allow this summons, not itself executed, and antedated, in order to connect it with the execution of the former, which was cancelled, to be made the foundation of judicial procedure; 29th March 1626, Keith against Robertson, *voce* PROOF, 10th February 1636, Edmiston against Sym and Skeen, *voce* WRIT, 17th December 1736, Earl of Sutherland against Dunbars, *see* APPENDIX.

The pursuer *answered*; That the summons was originally raised at his desire, though from the absence of his usual agent, it was not signed by him; that after the summons was executed, it was at one time intended to pass from the defender, and make the claim against another person connected with the newspaper; and that, accordingly, this person's name was substituted in different parts of the summons, with the view of raising an action against him; but that it was afterwards resolved to insist in the action as it stood; and that, on this account, the duplicate was applied for; in granting which, the clerks at the

Signet-office had acted according to an uniform practice, from which no prejudice could result.

No 63.

Certificates as to the practice were ordered by the Court, from the clerks at the Signet-office.

The defender disputed the authority and application of the certificates, when produced, and proposed that a report should be got from the Society of Writers to the Signet, or Keeper and Commissioners.

- THE LORD ORDINARY had repelled the objection.

THE COURT, upon advising a petition, and additional petition, with answers were, in general, clearly of opinion, that the objection was ill founded.

THE LORDS "adhered."

A reclaiming petition was (11th July) refused without answers.

Lord Ordinary, *Mathews*. Act. Lord Advocate *Dundas*, Solicitor-General *Blair*, Hope, *Boyle*.
Alt. *Fletcher*, *Cha. Ross*. Clerk, *Menzies*.

D. D.

Fac. Col. No 85. p. 195.

SECT. II.

What Writs must be produced *ad fundandam litem*?

1610. January 23. MELDRUM against HOWISON.

No 64.

In the suspension raised by Meldrum and Howison against Mr James Ord, the LORDS found, That Mr James satisfied the production of the contract, albeit he produced not the horning; and he being willing to dispute upon the execution of the contract, the suspender behoved to answer; and they would not suspend the letters, till they were produced, seeing the contract was produced, and he ready to dispute.

Haddington, MS. No 1751.

1610. July 7.

A. against B.

No 65.

THE assignee to a part of a tack of teind-sheaves, pursuing upon his assignation, will get process, upon production of his assignation, albeit he produce not the tack *initio litis*, but may prove it *cum processu*.

Fol. Dic. v. 2. p. 180. Haddington, MS. No 1946.