

No 23.

1672. *January 17.* TOWN of STIRLING *against* TOWN of FALKIRK.

THE town of Stirling having charged the inhabitants of Falkirk to forbear the trade of freemen, they having found caution, the letters were suspended. Now the town pursues an action of contravention of the caution, by importing and exporting staple-goods. The defenders *alleged*, No process, because there was only citation on six days, whereas contraventions and declarators ought to be on twenty-one days. *2do*, The burgh ought to produce their charter to instruct them to be a free burgh. *3tio*, The Earl of Callendar, who is Lord of the regality, and whose right may be prejudged, ought to have been called. The pursuer, to the first, opposed the summons containing a privilege by the LORDS. To the second, their notoriety of being a burgh-royal. To the third, the defenders act of caution, whereupon process was founded, and the defenders might have intimated to their superior, if they pleased.

THE LORDS repelled the defences.

*Stair, v. 2. p. 48.*

1672. *November 22.* STRACHAN *against* BURNET of Leys.

No 24.  
Continuation  
found neces-  
sary in a de-  
clarator of  
property,  
tho' it was  
instantly ve-  
rified.

STRACHAN pursues a declarator, that she had right to a wadset, and by consequence to the sums consigned by Burnet of Leys for redemption thereof. It was *alleged*, That this process being a declarator of property of so great consequence, it behoved to be continued. It was *answered*, That all was instantly verified. It was *replied*, That even though all were instantly verified, yet the matter being of great importance, and by the nature of the process it being a declarator of property, it behoved to be continued.

THE LORDS found that the same ought to be continued.

*Eol. Dic. v. 2. p. 178. Stair, v. 2. p. 122...*

\* \* \* Gosford reports this case :

IN a declarator of property, pursued at Strachan's instance, of the wadset of the lands of Balbaby against the Laird of Leys; it was *alleged* for the defender, that the summons was not continued, which is necessary by the form of process, seeing declarators of property are of that nature which is to take away the right of property from the defender. It was *replied*, That the summons being executed upon 21 days warning, and all being verified *instantly*, there needed no continuation, as is observed in all declarators of escheat, non-entries, and others of that nature.

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.*