

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.