

pear before the Court of Session ; and then to have advocated the cause from the Sheriff, not for iniquity, but for defect of jurisdiction. However,
 “ They advocated the cause, and remitted to the Ordinary to proceed.”

No 50.

Alt. P. Wedderburn.

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Fac. Col. No 120. p. 178.

1757. February 27.

FRANCIS CHARTERIS of Amisfield, Esq; and OTHERS, Proprietors of Land within the Shire of Berwick, *against* Sir ROBERT PRINGLE of Stitchill, and OTHERS, Justices of Peace and Commissioners of Supply of the said Shire.

THE defenders, at two general meetings, as Justices of Peace and Commissioners of Supply, had ordered, That two highways in the county should be repaired in preference to the rest ; and had fixed a composition to be paid in money, in case the labouring men should fail to attend at the reparation of these highways ; and, because they suspected that some opposition would be made to their proceedings, had come to the following resolution, viz. “ To empower a committee to name one or more proper agents at Edinburgh, for defending and discussing any bills of advocation or suspension that might happen to be offered against the proceedings of the meeting, or those acting under their authority ; and to empower the committee to draw upon the Collector of Supply for the necessary sums, to be paid out of the highway and bridge-money in his hands.” In consequence of this resolution, the expenses of a law-suit against some of the inhabitants of the county, who had refused to comply with the orders of the Commissioners of Supply, were paid by the collector ; and this payment was approved of unanimously in an after-meeting of the Commissioners. The pursuers, who had been averse to their whole proceedings, executed a summons of declarator and repetition, against the Commissioners, of the following purport : “ That the expending the highway and bridge-money in a law-suit was illegal ; and that the defenders, conjunctly and severally, ought to be decerned to refund to the Collector, the foresaid 100. on the L. 100 ; and to employ the same as the law directs. The summons also concluded against the defenders, conjunctly and severally, for L. 500 Sterling, *nomine damni*, and for expenses of the process.”

The defenders *pleaded* no process ; For that all parties having interest were not called, as the Earls of Haddington and Marchmont, and Mr Alexander Hume-Campbell, were not summoned in the action of declarator and repetition, although all three were present at the Michaelmas meeting where it was said the public money was ordered to be unlawfully employed : That it could not be pretended, that any two of the defenders might have been pursued conjunctly and severally, to refund the money applied by the whole number, or

No 51.

Whether particular members of a public meeting can be called severally to answer for the application of public money by the meeting?

No 51. conjunctly and severally, to make payment of the damages occasioned by the fault of the whole number; and if certain of the defenders could not have been so pursued, it was impossible to insist against any fewer than the complete number of supposed delinquents.

Answered for the pursuers; *imo*, That this defence of no process came too late, after peremptory defences had been given in; and, according to the stated practice of the Court, could not now be taken up; *2do*, That the pursuers only insisted against the defenders severally for their respective proportions of the money drawn from the Collector, and did not contend, that any one was liable for the whole; and therefore that the action was competent against each of them, without calling the rest.

“THE LORDS sustained process against such as were called, without prejudice to the pursuers afterwards calling the rest; but appointed the libel to be amended, and the word conjunctly to be struck out.”

Reporter, *Auchinleck.* Act. *Montgomery.* Alt. *Sir David Dalrymple.*

N. B. It was afterwards found, That the money was properly expended; and the defenders were assolizied.

W. J.

Fol. Dic. v. 4. p. 148. Fac. Col. No 15. p. 25.

1758. July 22.

ANNE ROSS and WILLIAM WALLACE Writer *against* THOMAS CLEGHORN and the Incorporation of TAILORS of PORTSBURGH.

No 52.

A summons, by being called in the Outer-House by the clerk, becomes a depending process.

ANNE ROSS raised a summons for payment of a debt against Lady Earlshall, which was executed upon the 2d of August 1721. This summons, after the days of compearance were elapsed, was called in the Outer House in the usual form by the clerk, and the calling marked on the margin thus: “3d February 1722, Actor, Irving, Alter. Boswel. To see.”

Anne Ross raised inhibition on this summons, in order to attach the lands of King’s Stables, then the property of Lady Earlshall, which was executed on the 22d August 1721, and recorded the 7th September thereafter.

This summons was neglected for 24 years; after which Anne Ross and William Wallace her assignee, raised a wakening and transference against the Lady Earlshall’s three daughters, and added a conclusion of reduction *ex capite inhibitionis* of a disposition of the lands of King’s Stables, by Lady Earlshall to David Bruce-Bailie, in 1724, and the service of Robert Bailie, as heir to him, in 1725, with infeftments, and other writs following thereon. Before this time Robert Bailie had sold the lands to Thomas Cleghorn and the Incorporation of Tailors.