

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.

No 26.

** Sir P. Home also reports this case :

March 1685.—MR JOHN BELSHES of Tofts having pursued a declarator against the Earl of Loudon and his Trustees, for an extinction of an apprizing deduced at the instance of Mr Livingston, of the estate of Loudon, whereunto the Trustees had right; *alleged* for the defenders, that there could be no process upon the summons, because the same was continued these several years after the days of the first summons were elapsed, but after year and day the instance perished, and the summons could not be continued, and that the style of all summonses was, to compear the day of next to come, which imported the day of compearance should be within the year, and consequently the continuation. *Answered*, That albeit the day of compearance behoved to be-filled up in the summons within year and day, yet the summons was to be called and continued at any time thereafter; and anent citation being given upon the letters, it proceeded upon the act of continuation, which was equivalent to a wakening. THE LORDS found no process upon the summons, in respect the same was not continued within year and day after the day of compearance, in which case, they found the instance perished, and so the summons could not be wakened.

Sir P. Home, MS. v. 2. No 717.

1687. *February 2.*

CHAPLAIN and BEATMAN *against* HAMILTON and Others.

No 27.
In a reduction
on the act
1621, a con-
clusion of
forthcoming
was sustained
in the same
libel.

SIR GEORGE DRUMMOND, late Provost of Edinburgh, having granted a disposition of all the merchant ware in his shop to Bailie Hamilton, John Drummond and wife, for payment and relief of the sums of money due to him and, wherein they stood engaged for him to several of his creditors; and Major Beatman and other creditors having pursued a reduction of the disposition, upon the act of Parliament 1621, the LORDS reduced the disposition, in respect of Major Beatman's prior diligence, he having charged Provost Drummond with horning, before the granting of the disposition; and Major Beatman having likewise arrested the goods in Bailie Hamilton, and the other person's hands; and there being a conclusion to make furthcoming, added to the summons of reduction; and after the disposition was produced, he insisted in the conclusion, to make arrested goods furthcoming; *alleged* for the defender, that the conclusion is to make furthcoming, libelled in the summons of reduction, is incongruous, and contrary to form; these being actions of a different nature, could not be accumulated, and therefore there could be no decret to make furthcoming upon the summons of reduction; and when the pursuer should raise an action to make furthcoming, he shall have an answer. As, also, the arrestment not being laid