

and others, compearance was made for Robert Nicolson and others, who *alleged*, That no process could be sustained, in respect the summons was past without a bill and deliverance of the Lords; whereas all summons of sale ought to pass by bill, specially narrating the act in virtue whereof the sale is raised; because, *imo*, Summonses of adjudication, that have neither so summary nor universal an effect as sales, require a bill; *2do*, By the act 17th Parliament 1681, intimations, which are but consequences of the process of sale, should pass *ex deliberatione Dominorum Concilii*; and much more is a bill requisite to found the summons itself.

*Answered* for the pursuer, No law appoints summonses of sale to pass upon bill; yea, these pass of course, because founded upon statute, the only design of a bill, when used, being in order to get an extract of the summons, in case it should be lost during a long dependence of the process. No parallel is to be drawn from a summons of adjudication to that of sale, because adjudications, by uniform and universal custom pass by bill, perhaps for clearing the secretary's dues, whereas summonses of sale go otherwise, being founded only upon the common debtor's circumstances, and the pursuer's title as a real creditor. Nor can any argument be fetched from letters of intimation, which need no bill, because the act and commission is their warrant, and they pass *per actum Dominorum*, and are not subscribed by writers to the signet, but by clerks of Session.

THE LORDS sustained process in the present case, in respect of the former custom, and the inconveniency that would otherwise arise to many who have *bona fide* purchased upon sales, wherein the formality of a bill was not observed; but the LORDS resolved to make an act of sederunt, that no summons of sale should hereafter pass without a bill.

*Forbes, p. 383.*

1711. July 3.

ANDREW BROWN of Braid and his CREDITORS against WILLIAM CARSTAIRS Writer in Edinburgh.

ANDREW BROWN of Braid having cited William Carstairs to count and reckon for his father's intrusions as factor with the said Andrew Brown's estate; the LORDS sustained no process, in respect the first day of compearance was beyond year and day of raising of the summons; albeit the same was executed within the year; because the common stile runs to compear at Edinburgh, the day of next to come, which argues that the first day of compearance at least should be cast within the year.

*Fol. Dic. v. 2. p. 179. Forbes, p. 516.*

66 K 2.

No 34.

Process not sustained on a summons wherein the first day of compearance was beyond year and day of the raising of the summons, although it was executed within the year.