

No 38.

' of bankrupts are affected with adjudications, comprisings, and other real rights,' &c. Besides, by the act of sederunt 23d November 1711, it seems to be supposed that a naked adjudication is a sufficient title in a process of sale.

THE LORDS allowed the pursuer's procurator to amend the libel with respect to the filling up of the days of compearance therein, and repelled the allegiance against the pursuer's title, sustained the libel and active title libelled on, &c.

*C. Home, No 83. p. 136.*

No 39.

1740. *January 4.* WEDDERBURN of That Ilk *against* TOWN of DUNDEE.

IN a declarator of astriction, the question occurred, how far the neglecting to call the heritor of the servient tenement, is supplied by his appearing, sisting himself as a party, and litiscontestating. The LORDS found, That however a man's appearing for his interest may give ground for a decret of preference against him, yet where he is not called, and no conclusion against him, his appearing in the process is no sufficient foundation of a personal decerniture against him.

*Fol. Dic. v. 2. p. 179.*

\* \* \* Kilkerran reports this case :

WHERE one not called in a process compears for his interest, though such compearance may be ground for a decree of preference, yet it was found, that his appearing for his interest could not be the foundation of a personal decerniture against him.

*Kilkerran, (PROCESS). No 2. p. 434.*

No 40.

1741. *June 5.*

GRAY and Others, HIS MAJESTY'S FEUERS in Ockney, *against* Sir JAMES STEUART of Burray, &c.

FOUND that different parties could not accumulate their actions in one libel, unless they had connection with one another in the matters pursued for, or had been aggrieved by the same act; but that the procurators for the pursuers had their choice in whose name the process should proceed.

Should the parties differ among themselves, who should have the choice, it is thought it could of right pertain to no other than the first named in the summons.

*Fol. Dic. v. 4. p. 147. Kilkerran, (PROCESS.) No 3. p. 434.*