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 allegeance against the pursuer's title, sustained the libel and active title libelled on, &c.

C. Home, No 83. p. 136.

1740. *January* 4. Wedderburn of That Ilk *against* Town of Dundee.

No 39.

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 decreet 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.*

1741. *June* 5.

Gray and Others, His Majesty's Feuers in Orkney, *against* Sir James Steuart of Burray, &c.

No 40.

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.*

*** C. Home reports this case:

No 40.

THESE feuers brought a process against Sir James, &c. charging him particularly with exercising over them, by himself, his tenants, or servants, a certain authority and jurisdiction, to which he had right; particularly, 1*mo*, For claiming a right to enter their possessions, and for breaking open doors, seizing their persons and goods, confining their persons and detaining their goods; 2*do*, For Employing officers called Ranselmen to seize their persons and goods; 3*tio*, For compelling them to labour his ground, and, upon their disobedience, poinding their goods; 4*to*, For compelling their servants, without their consent, to leave their masters, and to serve such other persons as he think propers; 5*to*, For assuming an authority to settle the limits betwixt his property and theirs, with a variety of other articles.

Pleaded for Sir James, and the other defenders, That it was against the principles of law and justice, that so many pursuers, having no earthly connection with one another, should be allowed to associate themselves, and, as it were, to club the several injuries they pretend to have received from one, or more persons, and by throwing these into one libel, to rear up so vexatious a prosecution.

Answered, It is true, that, by the common law, the accumulation of many actions into one libel was reprobated, because of the particular forms to be observed in every action; yet that subtilty does not maintain in our practice, our rule being *quot articuli, tot libelli;* witness actions against debtors, where 100 persons are convened in the same libel upon different *media*. Nor is there any rule of law for distinguishing betwixt the case of the pursuers and the defenders. It is well known, that, in the Court of Justiciary, the same person is accused in one libel of a variety of crimes. See the act of sederunt, 23d November 1711; and a late case, Inhabitants of the Canongate against Bailie Jack. See APPENDIX.

Replied, Sir George Mackenzie observes, It is a specialty in our law, that not only more debtors may be pursued in one summons, but that many different conclusions may be accumulated in one libel against one and the same person: A very superfluous observation, if it were law, that as many different persons may pursue as many different actions as they have grounds of complaint against one or more persons, especially where there is not the smallest connection, either in persons or things. Is it not a great hardship to be distracted at one and the same time with such a multiplicity of different actions, all of them thrown into one summons? How is it possible to prepare counsel upon such a variety of different points? The practice of the Court of Justiciary affords no argument; for there the King's Advocate is, properly speaking, the prosecutor *ad vindictam publicam;* and even there, if the crimes are so many that they cannot be easily concluded in one sederunt, it is usual for the Court to divide the trial.

No 40. THE LORDS found this action not competent at the instance of so many pursuers, but allowed the process to proceed at the instance of any one of them, and ordained the procurators for the pursuers to make their election.

And, upon a reclaiming petition and answers, the LORDS adhered, with this qualification, that where one or more persons complain of the same act, or acts of oppression, whereby he or they were affected, they may maintain their action upon this summons.

C. Home, No 167. *p.* 281.

1743. *January* 12. BEGBIE *against* ANDERSON.

No 41. WHERE the decree of an inferior court was in a suspension turned into a libel, the LORDS would not suffer the libel to be amended or added to, because the decree was the libel; which being the record of the inferior court, could not be altered.

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

*** A similar decision was pronounced, 6th July 1779, Watson against Still. See APPENDIX.

1745. *February* 13. DICKSON *against* GIBSON.

No 42. THE LORDS found no process against a man cited by a wrong Christian name.

Fol. Dic. v. 4. *p.* 146. *D. Falconer.*

*** This case is No. 235. p. 8859. *voce* MEMBER OF PARLIAMENT. A similar decision was pronounced, 6th July 1753, Dalgliesh against Hamilton, No. 9. p. 4163. *voce* FALSA DEMONSTRATIO.

1745. *June* 20.

Lord ARCHIBALD HAMILTON *against* The Countess of RUTHERGLEN and Earl of MARCH.

No 43. There is no need of summoning the heirs of a litigant, who appealed and died, on the cause being

LORD ARCHIBALD HAMILTON brought an action against the Earl of Selkirk, in which several interlocutors were pronounced, from some whereof Lord Archibald appealed.

The Earl of Selkirk died, and the Countess of Rutherglen and Earl of March, as deriving right from him by deed to the subject in controversy, appealed from