

No 187. *passive*; where it is only necessary to intimate a process to another party, that party, or his heir, may be called by an incident; but no decree can go against a man called only by an incident.

N. B.—In processes before the Commission for Plantation of Kirks, &c. the Lords allow even principal parties to be called by an incident.

Fol. Dic. v. 4. p. 149. Kilkerran, (PROCESS) No 6. p. 435.

* * * D. Falconer reports this case :

CERTAIN Heritors on the river of Don pursuing several others inferior to them, for regulating their cruives, possess in common, it was *objected*, That all parties having interest were not called, in respect that William Brebner was summoned; whereas the right, at the time of the citation, was in James his father; although, when the action came to be insisted in, James was dead, and William had succeeded him; whereupon the pursuers, on a new summons, called William Brebner.

Objected, That there could be no process on this summons, the execution not bearing the names of the whole defenders, in terms of Act 6. Parl. 1672.

Answered, The intent of the act was, that executions should be particularly applied to a particular summons, and not be so general as to be applicable to any; which was done here, the whole pursuers being mentioned and designed; and it never was the practice, where there were many defenders, to resume them all in every execution, as in processes of ranking and sale, improbations and actions against debtors; besides, here William Brebner was the only defender called on this summons.

THE LORD ORDINARY, 3d December 1747, "repelled the objection."

On bill and answers, *observed*, That it might not be necessary to name the whole defenders, where their interests were separate; but here the cause could not go on against one without the rest.

THE LORDS sustained the objection.

Act. *Ferguson.*

Alt. *H. Home.*

Clerk, *Kirkpatrick.*

D. Falconer, v. 1. No 241. p. 326.

No 188.
Decree being pronounced, and opened on a reclaiming bill, and the peti-

1748. November 4. GORDON of Muirake *against* The OFFICERS of STATE.

GEORGE JAMES GORDON, of Muirake, gave power to Mr Theodore Gordon to dispoise his estate, who entered into a minute of sale thereof with Sir William Gordon of Park; after which, Muirake dispoised it to Alexander Henry Gordon his own brother.

Sir William intented a reduction of this disposition, on the medium, that the disponee was partaker of the fraud by his brother in granting double rights.

Alexander Henry Gordon obtained an interlocutor of an Ordinary, 12th December 1744, assoilzeing from the reduction. Against which a petition was presented, and answered; but, before advising, Sir William had engaged in the Rebellion, and was attainted.

Intimation was made to the King's Advocate, and the Officers of State called upon a diligence; but they did not appear.

THE LORDS, in respect of the intimation made to the King's Advocate, and that the Officers of State, being called upon a diligence, did not insist in the cause, found, That the petition was fallen; and allowed the defender to extract his decret on the Lord Ordinary's interlocutor.

Act. Absent.

Alt. Lockhart.

Clerk, Gibson.

D. Falconer, v. 2. No 3. p. 4.

1752. June 26.

DAGLIESH against HAMILTON.

THE LORDS sustained the objection to a process of sale of a minor's lands, That the tutors and curators of the minor were not called; and found, That they could not be brought into the field by a diligence.

Fol. Dic. v. 4. p. 149. Kilkerran.

* * This case is No 16. p. 2184. voce CITATION.

1755. February 18.

GILLIES against WAUGH.

IN a process for reducing an election of one set of magistrates and counsellors, and for declaring the election of another, all persons who are, or pretend to be, members of the Council, must be made parties to the process, either as pursuers or defenders in the principal summons; and it is not sufficient to call them by an incident diligence.

Fol. Dic. v. 4. p. 149.

* * This case is No 22. p. 1875. voce BURGH ROYAL.

No 188.
tioner thereafter being attainted, the respondent having made intimation to the King's Advocate, and called the Officers of State by a diligence, who did not appear, the bill was found fallen, and decree allowed to be extracted on the former interlocutor.

No 189.

No 190.