

No 57. call their summons as if these had not existed, therefore, "repelled the reasons of reduction of this decret founded upon these proceedings.

Act. Cullen.

Alt. Hay Campbell, Claud Boswell.

Fac. Col. No 23. p. 38.

1780. July 26.

CUNNINGHAME, DOUGAL, and Company, *against* WILLIAM MARSHALL.

No 58.
Edictal citations in a ranking and sale not being recorded before the last day to which the citations are given, the pursuer may, after calling his summons, let it fall out of the roll and call it anew.

CUNNINGHAME, DOUGAL, and Company, raised an action of ranking and sale against Marshall. After the legal *inducia* were elapsed, the summons was called by the clerk in the Outer-House, and a *partibus* marked upon it. It was then inrolled in the regulation-roll for the ensuing week, and called before the Lord Ordinary in the Outer-House; when appearance was made for the defender, who *objected*, That the edictal citations at two of the parish churches had not, in terms of the act of sederunt 1711, been recorded before the last day of compearance.

Upon this the pursuers having recorded the citations, and then filled up a day of compearance in the blank space of the summons, posterior to all the proceedings mentioned, *insisted*, That there was now no depending process before his Lordship, and declared that they would call their summons of new, and bring it before another Lord Ordinary, as every thing done before the day of compearance so filled up was void. On the other hand, the defender maintained, that the blank space left in the summons was virtually supplied by the calling of the clerk, and subsequent proceedings, and in practice is never, except very rarely, actually filled up; and that a depending process being thus constituted, it was not in the power of the pursuers to make void the proceedings held in it.

The Lord Ordinary pronounced this interlocutor: "Having considered the foregoing minute, and consulted with the under clerks as to the point of form, finds, That there is no dependence sufficient to bar the pursuers from calling again their summons."

A reclaiming petition against this judgment was refused without answers.

Lord Ordinary, *Hailer*.

Act. Mat. Ross.

S.

Fac. Col. No 119. p. 220.

No 59.

1793. June 12.

HERBERTSON *against* RATTRAY.

ROBERT RATTRAY was cautioner for James Rattray, in a suspension of a decree of the Sheriff pronounced in absence against him. The latter objected, That the decree was null, as being pronounced when he was in England, and