

## No 15.

A deliverance on a bill of summons craving warrant to cite in general, was sustained as a sufficient warrant to cite a person out of the kingdom.

1747. July 22. LORD BRACO *against* BRODIE Lord Lyon.

IT was objected to an adjudication craved against the Lord Lyon, That the defender was cited as out of the kingdom, for which there was no warrant in the bill of summons, but only to cite in common form.

THE LORD ORDINARY, 14th instant, 'on advice, repelled the objection, and the LORDS refused a bill and adhered.'

*Fol. Dic. v. 3. p. 185. D. Falconer, v. 1. No 202. p. 273.*

1759. February 13.

ALEXANDER ORME, Writer to the Signet, *against* NEIL MACVICAR.

## No 16.

A summons of furthcoming was raised and signeted before executing the arrestment upon which it was to be founded. The Lords agreed that it was an irregular practice, but as no prejudice was alleged done to any person by it, they dismissed a complaint against the arrester, and found expenses due.

THE affairs of Robert Baillie merchant in Edinburgh, and Robert Fisher of Newhall, who had become cautioner for him, having gone into disorder, the greatest part of their creditors consented to trust-rights granted by them to certain trustees for behoof of the whole creditors. Neil Macvicar, late writer in Edinburgh, being creditor to Baillie for 2000 merks, pursued a separate course of diligence, and adjudged for his own behoof. At the same time he used several arrestments against the subjects of both the common debtors, and brought furthcomings thereon. A complaint was given into the Court against the said Neil Macvicar by the other creditors, charging Macvicar, and the messenger who executed one of these arrestments and furthcomings, with an irregular and illegal procedure in the execution thereof, viz. That the summons of furthcoming had been executed at the same time with the arrestment, on the afternoon of the 24th May 1757, at nine miles distance from Edinburgh; so that it was not possible that a summons libelling on these arrestments should have been taken out from the signet on the 24th of May, (as the signet-summons bears), after the execution of the arrestments; and therefore the narrative in the execution of the summons of furthcoming was evidently false, as the warrant for the citation could not be in the messenger's hands at the time.

*Answered* for Macvicar, The summons of furthcoming was signeted upon the forenoon of the 24th of May 1757; and the messenger carried it from Edinburgh, along with the horning expedite 20th November 1755, and had both in his custody when, upon the afternoon of the said 24th May, he gave the copies of citation in the furthcoming immediately after laying on the arrestment; so that the simple fact is, That a summons of furthcoming was taken out before using the arrestment.

This method, though perhaps somewhat irregular, is however justified by practice, now grown constant and inveterate. Nothing wrong was or could be meant by it in this case; and the only intention of it was, to save the expense