

No 48. when the Officers of State are to be called; their names are never particularly expressed in the summons; and the practice is reasonable, for they may happen to be changed between the time of signeting and executing the summons.

*Fol. Dic. v. 4. p. 148. Kilkerran, (PROCESS.) No 14. p. 439.*

No 49. 1752. July 4. CLERKS, Petitioners.

JAMES and George Russels pursued James Clerk and his Sons before the Sheriff-depute of Stirlingshire for a battery; their libel concluded also, that the defenders should pay an assythment, and find caution of lawborrows. The Sheriff decerned in the lawborrows, and found expences due; but made no mention of assythment in his sentence. The Clerks suspended; the Lord Ordinary turned the decret into a libel; and then, besides adhering to the Sheriff's interlocutor, found assythment and damages due.

*Pleaded* in a reclaiming petition for Clerks; The Ordinary's interlocutor is not agreeable to form, and cannot subsist; for that a decret, which exceeds the demand of the pursuer, is intrinsically null; now, in this case, the charge of the pursuers was the decret of the inferior judge; nor did they ever demand more than that the letters should be found orderly proceeded.

THE LORDS were of opinion, That whenever a decret is turned into a libel, not only the decret of the inferior judge, but also the original libel, is understood to be before the Court; and therefore

“ They refused the petition.”

Petitioner, *Andrew Pringle.*

D. *Fol. Dic. v. 4. p. 148. Fac. Col. No 24. p. 44.*

No 50. 1754. December 11.

WILLIAM ROSS *against* GEORGE and JAMES MAXWELLS.

A defender dying during the dependence of a process before the Sheriff, his representatives living out of the kingdom, must be called by a transference before the Court of Session, and the other process advocated.

DURING the dependence of an action at the pursuer's instance, against Alexander Maxwell, before the Sheriff of Haddington, Alexander died. The pursuer called, by letters of supplement, George and James Maxwells, both resident in London, as Representatives of Alexander, to appear before the Sheriff; the Sheriff found they were not legally summoned. And the case being brought by advocacy, upon the head of iniquity, before the Court of Session, it was reported by Mr Thomas Hay of Huntington, Lord Probationer.

THE LORDS seemed to be of opinion, That, in cases of this kind, the proper form of proceeding was to have called the defenders by a transference to ap-