doun, No 26. p. 11975. For a wakening is only of summons superannuated after it was once called, Stair, B. 4.T. 34. § 4. This holds for the same reason, that a summons not executed within year and day after the raising, becomes null, March 1686, Jolly *contra* Laird of Lamingtoun, (See APPENDIX). So, in the Roman law, the prætor's edict lasted only for a year, unless turned into a process, by judicial signatures within that time; and even after *res* was *litigiosa*, there was a certain time prefixed for a final determination of the cause, L. 13. § 1. C. De Judiciis. Which is also done in most places abroad. No 31.

THE LORDS found, That the summons, not being called within year and day after the last diet of compearance, fell and could not be wakened.

Fol. Dic. v. 2. p. 179. Forbes, p. 275.

1709. *July* 19.

WILLIAM BAILLIE of Lamington *against* MR ALEXANDER MENZIES of Culterallers.

No 32.
Citation for the second diet sustained, though the day of compearance was nineteen months after the citation, it being within a year of the first diet of compearance.

LORD BOWHILL reported William Baillie of Lamington, against Mr Alexander Menzies of Culterallers, who holding some lands of Lamington, he was pursued in a declarator of non-entry. *Alleged*, No process, for the execution is null, in so far as the day of compearance for the second diet is without the year from the giving of the citation, whereas both the days should be within the year from the first execution; and he has that respect for the superior, that he would not have proponed this dilator, if Lamington had not declined all terms of accommodation. *Answered*, This was neither a nullity nor an informality; for it agreed to the analogy of the old form and custom, whereby, after the first execution there were acts and letters issued out, which might have been executed after year and day of the first execution; it was enough if the day of compearance for the first diet was within the year of the summons; and the 6th act 1672, taking away acts and letters, and appointing both to be executed at one time, for the ease of the people, and abridging expenses, does not alter the distance; and the reason why the second diet was without the year, was, there were more defenders, and it was fit one day of compearance should be made to serve for all. THE LORDS found it no nullity, but sustained process, and repelled the dilator. Some thought it inconvenient, and wished it were amended by an act of sederunt for time coming, though it could not amount to a nullity *quoad* bygone citations.

Fountainhall, v. 2. p. 516.

*** Forbes reports this case:

1709. *July* 15.—IN a reduction, improbation and nonentry, at the instance of Lamington against Culterallers his vassal, the defender *alleged*, That no pro-

No 32.

cess could be sustained against him, in respect there is more than year and day betwixt the citation for the second diet, and the day of compearance.

Alleged for the pursuer, In executions, the day of compearance for the first diet must be within year and day of the citation, but it sufficeth that the day of compearance for the second diet be within year and day of the first diet of compearance.

Answered for the defender, Albeit when different citations were given for the first and second diets, it was sufficient to make the first day of compearance within year and day of the citation, and the second within a year of the first; yet now when citations to both diets are allowed to be given at once, the day of compearance should be cast within year and day of the date of the execution, otherwise wakenings would be unnecessary in any case.

THE LORDS repelled the dilatory defence.

Fol. Dic. v. 2. *p.* 179. *Forbes, p.* 347.

1709. *December* 31.

ALEXANDER WEDDERBURN *against* HENRY CRAWFORD.

No 33.
Process sustained on a summons of sale past without a bill, in respect of the former custom to do so, but in future such summonses are only to be expede on bill.

ALEXANDER WEDDERBURN, Town Clerk of Dundee, being creditor to Henry Crawford, merchant there, raises a process of sale of his lands on the statute of bankrupt. Compearance is made for Nicolson and Low, likewise creditors, who object no process, because all summonses of sale ought to pass by bill, and bear *ex deliberatione Dominorum Concilii*, which this does not; and though the act 17th 1681, anent judging bankrupts' lands speaks not expressly of this, yet it has the equivalent; for it requires the intimations of the sale to pass by deliverance; and if adjudications, which have a legal reversion, require a bill, then sales which adjudge the property, ought much more to pass so. *Answered*, There is neither law nor act of Parliament to appoint summonses of sale to pass on bills, and *de facto* few of them do so, as appears by a declaration under the hands of sundry writers to the signet, and if the Lords should sustain this as a nullity, it may cast many of the processes whereon purchasers think themselves secure; and all the use of a bill is in case the summons should miscarry, they may have a new extract from the signet. THE LORDS considered the hazard and danger that might redound to many bygone purchasers at roups, if this were sustained, and therefore repelled the nullity; but wished there might be some order and regulation to correct this abuse in time coming.

Fol. Dic. v. 2. *p.* 177. *Fountainhall, v.* 2. *p.* 550.

*** Forbes reports this case:

1709. *December* 31.—IN the action of sale of the lands of Halcartoun, pertaining to Henry Crawford, carried on at the instance of Alexander Wedderburn