

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-

pear before the Court of Session ; and then to have advocated the cause from the Sheriff, not for iniquity, but for defect of jurisdiction. However,
 “ They advocated the cause, and remitted to the Ordinary to proceed.”

No 50.

Alt. P. Wedderburn.

S.

Fac. Col. No 120. p. 178.

1757. February 27.

FRANCIS CHARTERIS of Amisfield, Esq; and OTHERS, Proprietors of Land within the Shire of Berwick, *against* Sir ROBERT PRINGLE of Stitchill, and OTHERS, Justices of Peace and Commissioners of Supply of the said Shire.

THE defenders, at two general meetings, as Justices of Peace and Commissioners of Supply, had ordered, That two highways in the county should be repaired in preference to the rest ; and had fixed a composition to be paid in money, in case the labouring men should fail to attend at the reparation of these highways ; and, because they suspected that some opposition would be made to their proceedings, had come to the following resolution, viz. “ To empower a committee to name one or more proper agents at Edinburgh, for defending and discussing any bills of advocacy or suspension that might happen to be offered against the proceedings of the meeting, or those acting under their authority ; and to empower the committee to draw upon the Collector of Supply for the necessary sums, to be paid out of the highway and bridge-money in his hands.” In consequence of this resolution, the expenses of a law-suit against some of the inhabitants of the county, who had refused to comply with the orders of the Commissioners of Supply, were paid by the collector ; and this payment was approved of unanimously in an after-meeting of the Commissioners. The pursuers, who had been averse to their whole proceedings, executed a summons of declarator and repetition, against the Commissioners, of the following purport : “ That the expending the highway and bridge-money in a law-suit was illegal ; and that the defenders, conjunctly and severally, ought to be decerned to refund to the Collector, the foresaid 100. on the L. 100 ; and to employ the same as the law directs. The summons also concluded against the defenders, conjunctly and severally, for L. 500 Sterling, *nomine damni*, and for expenses of the process.”

The defenders *pleaded* no process ; For that all parties having interest were not called, as the Earls of Haddington and Marchmont, and Mr Alexander Hume-Campbell, were not summoned in the action of declarator and repetition, although all three were present at the Michaelmas meeting where it was said the public money was ordered to be unlawfully employed : That it could not be pretended, that any two of the defenders might have been pursued conjunctly and severally, to refund the money applied by the whole number, or

No 51.

Whether particular members of a public meeting can be called severally to answer for the application of public money by the meeting?