No 79.

own consent reserving to the King's Advocate his defences against the certification of the summons; at the day assigned by the act, the Advocate refused to produce, *alleging*, that no process should be granted, because the Clerk of register was not called, who was a necessary party, as keeper of all the King's writs and evidents. It was *answered*, 1*st*, that certification should be given against the decreet and testimonial, because they had taken a day of their own consent to produce it, 2*do*, The Clerk of register was not keeper of the sentences, except such as were given by the Parliament, Session, or Chequer; but sentences pronounced by the Justices, Sheriffs, or other Judges, to which Courts he was not clerk, were not esteemed to be in his keeping, but all the King's Officers had their own charge and trust, as the secretary of warrants passing the signet; the Privy Seal had its warrants and register, the Director of the Chancellary brieves and services, the Justice-Clerk, sentences of justice courts and perambulations, *et sic de cæteris*, whereof the Clerk of register was not keeper. Farther, that the Treasurer and Advocate were only necessary parties to be called to represent the King in his actions; and that the writ called for being in the Clerk of register's hands, and seen by the Advocate, the Clerk of the register could not of his office refuse to exhibit it, being required by the Advocate. It was *answered*, That the Clerk of register, having his office as free as the Advocate, could not produce the King's evidents unless he had been summoned, or had a particular warrant of the King. In respect whereof, the LORDS found, by two several interlocutors, no process while the Clerk of register was summoned.

In that same cause, the LORDS found, that the Clerk of register might extract any evident being in the King's register, whereof he was keeper, which would make as great faith as the principal, except in cases of improbation: As also, that he might give doubles of any evident of the King's, lying in the register, which had no warrant of registration; and that the said double being subscribed by the Clerk of register, after this manner, *hæc est vera copia principalis cartæ vel sententiæ litera in registro existen*, made as great faith as the principal, except in improbations; and therefore found, that a copy of the sentence or testimonial called for, being produced by the pursuer for satisfying the production was sufficient to that effect, and, in respect thereof, found no necessity to summon the Clerk of register. *See* REGISTRATION.

Fol. Dic. v. 1. *p.* 139. *Haddington, MS. No* 2678.

No 80.
In an improbation the Lords found, that services cannot be reduced for not production, where only the par-

1624. *February* 17. LO. ELPHINGSTON *against* E. MARR.

IN an action of improbation, pursued at the instance of the Lord Elphingston against the Earl of Marr, the LORDS found, That services, whereby persons were served heirs to their predecessors in lands, ought not to be decerned to make no faith for non-production, where the party is only called in that process, and neither the director of the Chancellory, who is presumed to have the service, and to

keep the same for the warrant of the retour, nor the Judge before whom the service was deduced, are called; for the LORDS found, That no certification ought to be granted against the service, except either the Director of the Chancellary, or the Judge and Clerk, before whom the service was deduced, had been called with the party to produce the same; and also the LORDS found, That the retours of elder dates, before the year 1550, ought not to be decerned to make no faith for non-production, where the principal service, sealed by the assizers, is produced, albeit the same be not extant at the Chancellary, nor extracted out of the same. *See* RETOUR.

No 80. ty is called in the process; and neither the director of the chancellary, who is presumed to have the service, and to keep the same for the warrant of the retour, nor the judge and clerk before whom the service was deduced, is called.

Act. *Nicolson elder* & *Stuart*. Alt. *Hope* & *Aiton*. Clerk, *Scot*.

Fol. Dic. v. 1. *p.* 139. *Durie, p.* 111.

1627. *January* 31. L. LAWRISTON *against* TENANTS.

No 81. In an improbation, the evidents made to the defender's authors being called for; found, that it was not needful to call the apparent heirs of these authors, unless the defender would specially condescend who the apparent heirs were.

IN an improbation at the instanse of the L. Lawriston against the tenants of South-houses, the evidents made to certain persons, authors to the defenders, being called to be improven; and the defenders *alleging*, That no process ought to be granted against the writs, except the apparent heirs to the persons whose writs were quarrelled in this action, were called thereto; this allegeance was repelled, seeing the defenders condescended not specially who the persons were who were apparent heirs, and who should be summoned, without the which were condescended upon, there was no necessity to summon them. The like was done before, *anno* 1619, in an improbation betwixt the E. Winton *contra* Lo. Corstorphin.

Act. *Mowat*. Alt. ——. Clerk, *Scot*.

Fol. Dic. v. 1. *p.* 139. *Durie, p.* 266.

1627. *March* 15. E. KINGHORN *against* L. GRANGE.

No 82. An apparent heir being called in a reduction and improbation of a right to lands, granted to one of his predecessors, this dilator proponed by him was sustained, viz. that he was denuded of the lands in favour of another, who

IN a reduction at the instance of the E. Kinghorn, against the L. of Grange Kirkcaldy, for reduction of an infeftment granted by the E. Kinghorn's forebears, designed in the summons, to umquhile Sir William Kirkcaldy of Grange, of certain lands of the barony of Kinghorn, pertaining to the said pursuer's predecessors, in the which process the defender was called as apparent heir to that person, to whom the said infeftment, now desired to be reduced, was granted,— THE LORDS found this alleged dilator relevant, proponed by the said defender, viz. that he was denuded in favours of George Foulis, who was heritably infeft in the same lands by a public infeftment, holden of the King's Majesty; and therefore they found no process until the said George Foulis were summoned to this reduction, he standing infeft in the lands. And so the LORDS found, that