

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 Chancery, 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 Chancery, nor extracted out of the same. See RETOUR.

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.

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 allegiance 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.

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

No 80.

ty is called in the process; and neither the director of the chancery, 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.

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.

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

## No 82.

now stood infest, and who was not called; altho' the right by the apparent heir to that person was upon a singular title, and had no dependence upon the right sought to be improven.

the party infest was a necessary party to have been cited to this reduction, albeit his right flowed from that apparent heir who was called; and that the right made to him was not depending upon that right which was here desired to be reduced, but was acquired by that person who was called as apparent heir in this process, from another ground, not flowing from the course of the infestment quarrelled, and disposed again by him to the said George; so that it might appear, there was no necessity to have cited him, whose right depended not upon the right controverted in this process; and yet the Lords found no process, while he was summoned thereto. It is here to be observed, that an action of reduction against any who is called as apparent heir to his predecessor, whose right is quarrelled, is ever sustained; so that it appears more hard that any having right from the apparent heir should be found necessary to be cited, seeing the citation of the apparent heir's self is enough, albeit he be not infest as heir, but if an infestment to any who were called to hear that infestment made to himself, desired to be reduced, *eo casu* any having a public infestment from the person's self, whose right were quarrelled, may with reason be reputed a party to be cited. In this process George Foulis compearing, and desiring to be admitted for his interest, by virtue of his heritable infestment, *alleged*, that no process ought to be granted in the cause, while the Clerk of register were summoned thereto, seeing the said George was denuded in his favours, whereupon the Clerk of register was infest by a public infestment. This allegiance was repelled, for the LORDS found the said George could not be admitted for his interest, to propone this dilator upon a right made to him, of the which right he himself alleged he was denuded in favour of another, and so the LORDS found, that he could not compear to stay process.

Act. *Hope, Nicolson, et Rollock.*

Alt. *Stuart et Aiton.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 139. Durie, p. 290.*

## No 83.

Certification was refused in an improbation, at the instance of a superior against vassals, of writs granted to their predecessors, until the predecessor's heir of line was called, although the heir-ma'e was called, and had acquired the

1628. *January II.*

*E. MARR against His VASSALS.*

In an improbation betwixt the *E. Marr* and *His Vassals*, wherein the defenders were convened for production and improbation of writs of the lands libelled, made to their fathers, good-sirs, grand-sirs, and other special predecessors enumerate in the summons, and to any other their predecessors generally, to whom they may succeed *jure sanguinis*, as use is in such actions; it being *alleged* for *L. Pitsligo*, one of the defenders, that no process nor certification could be given against him for any writs made to his predecessors, because his descent was from a second brother of *Pitsligo*, whose elder brother had daughters, who of the law would be lineally and generally heirs to their predecessors *in sanguine*; and which daughters had persons descended of them in life, upon whom the defenders condescended, and who not being called, no process could