

they might have alleged some reasons why the legacy should not have been paid, as *quod debita excedunt bona*, or some other lawful defence, which makes them necessary parties to have been called; so that the process, without their citation or concurrence, could not be sustained.

No 36.  
funct. They might allege reasons why the legacy ought not to be paid.

Act. Nairn.

Alt. Haliburton.

*Fol. Dic. v. 1. p. 134. Durie, p. 288.*

1627. December 17. LD. CARNOUSIE *against* LD. TECHMURIE.

A COMPRISER of a reversion, redeeming lands from a wadsetter, need not call the reverser or his heirs.

No 37.

*Fol. Dic. v. 1. p. 134.*

\* \* \* See The particulars, No 12. p. 2181.

1639. January 31. DUNDAS *against* HIS GOODSIRE'S EXECUTORS.

GEORGE DUNDAS, Oye to the Goodman of Newliston, pursues the Executors of his umquhile Goodsir, for payment of 500 merks, left him in legacy by his Goodsir, by a codicile made after his testament, bearing this legacy; and the defender quarrelling this alleged codicile, as not sufficient to give him right to the legacy, in respect there was a perfected principal testament bearing no such legacy; and this note made thereafter, is but a testificate made and subscribed by Mr John Boog, minister of the parish, wherein the defunct died, which is neither subscribed by the testator, who could write, nor by the minister in his name, and at his command; but is only given out under the form of a notary's instrument, and so wants all formal solemnities requisite to acts testamentary, to which the law only privileges ministers to be notaries; attour, the process cannot be sustained, except all the legatars in the principal testament were called thereto; these allegiances were repelled, and the codicile sustained, being in substance and matter found good in itself; and no necessity was found to call the the rest of the legatars. See WRIT.

No 38.  
One legatee need not call other legatees.

*Fol. Dic. v. 1. p. 134. Durie, p. 873.*

1663. January 16. The EARL of ROXBURGH *against* KINNEIR, MINISTER.

MR ANDREW KINNEIR, minister at Calderclear, in *anno* 1650, obtains a decret of locality against his parishioners, and namely against the Earl of Roxburgh, for his lands of Auchniounselhill and Millburnhead, which are burden-

No 39.  
Citing of tenants is not sufficient, where the master is

No 39.  
most concerned, as in  
obtaining a  
decree of  
locality.

ed with a locality far above their proportion of rent. The decret was suspended in the *Englises* time, upon this reason, That the Earl was neither called nor compearing, and the decret was given to his very great prejudice. The English Judges nevertheless found the letters orderly proceeded. The Earl intents a review upon the same reason.—It was *alleged*, That the decreets of the Commission for plantation, &c. were declared to be decreets of Parliament, and the tenant of the land was cited.—It was *answered*, That in all judicatories whatsoever, decreets against parties must be given upon citation, otherwise they are null; and this nullity is receiveable before the Judge Ordinary; and the citing of a tenant is not sufficient where the master is most concerned.

THE LORDS found the decret null, and reduced.

*Fol. Dic. v. I. p. 135. Gilmour, No 63. p. 47.*

No 40.

1683. *November.*

REIDFOORD *against* JOHNSTON.

IN a declarator at the instance of an appriser, for declaring another's prior apprising to have been extinct and satisfied within the legal, by his and his author's intromission; the defender *alleged*, no process, in so far as concerned the author's intromission, in respect authors were not called.

*Answered*: The defender's apprising not being quarrelled by reduction or improbation, to take away the right, as not good, or insufficient, but only by declarator, as being satisfied within the legal, the pursuer needed not to call authors; but if the defender pleased, he might cite them *cum processu*, or intimate the action to them.

THE LORDS repelled the allegiance, in respect of the answer.

*Fol. Dic. v. I. p. 135. Harcarse, (COMPRISINGS.) No 295. p. 69.*

## SECT. X.

### Citation in Declaration of Bastardy.

No 41.

1612. *January 18.*

CLERK *against* STRACHAN and DRUMMOND.

IN an action for the goods of a bastard, it is not necessary to summon any of his kin, because he has no lawful kinsman; but it is sufficient to summon the King's Treasurer and Advocate.

*Fol. Dic. v. I. p. 135. Haddington, MS. No 2356.*