

1682. February.

LADY HISLESIDE and her Husband *against* BAILLIE of LITTLEGILL.

No 7.

THE pursuer of an improbation calling for writs flowing from special authors whom he had not cited, and craving the defender might take a term to produce;

Alleged for the defender; That he could not be obliged to take a term, in respect his authors were not called; for though private and unknown authors may be called *cum processu* to the first term, when condescended on by the defender; yet when writs are called for, as flowing from special authors, these authors ought to be cited *ab initio*; because they might propone a defence against the taking of terms.

THE LORDS would not sustain process for taking of terms, till the authors mentioned in the libel were called, although it was usual not to libel or fill up the summons till immediately before the outgiving of the process, and would not allow them to be cited *cum processu* to the first term of production; and yet the King's officers are allowed to be cited *cum processu*, Duke of Buccleuch and Scot, *contra* Scot of Burnfoot.—See APPENDIX.

Fol. Dic. v. 2. p. 302. Harcarse, (IMPROBATION AND REDUCTION.) No 526.

p. 146.

1682. December. LORD ABERDEEN *against* PITCAIRN.

No 8.

IN a general declarator of a defunct's escheat, it being *objected*, That the nearest of kin were not called, the LORDS allowed them to be cited *cum processu*.

Fol. Dic. v. 2. p. 301. Harcarse.

* * * This case is No 67. p. 2209. *voce* CITATION.

1684. December 9. NAIRN *against* NAIRN.

No 9.

MARGARET NAIRN, pursuing the Lady Nairn to pay a debt contained in the Lord Nairn her father's bond, as heir to him; she *alleged*, No process, because all parties having interest are not called, viz. my Lord Athole's son, her spouse. *Answered*, She cannot pretend that she is in the case of a marriage, they being both but infants, not capable of marriage, only there are *nuda sponsalia*, and a contract of marriage betwixt them, to be consummated *de futuro*; and either may resile. THE LORDS, on Edmondston's report, repel the dilatory defence,

and sustain process, the pursuer always citing the said Lord Murray and the Marquis of Athole, his father and administrator *cum processu* by a diligence, and the process to sist in the mean time.

Fol. Dic. v. 2. p. 302. Fountainhall, v. 2. p. 318.

No 9.

1686. January 20. BAILLIE against DUNBAR.

IN an improbation of a horning it being *objected*, There could be no process, because the creditor in the horning was not called, it was found, that he ought to be cited; but time was allowed to call him *cum processu*.

Fol. Dic. v. 2. p. 302. Fountainhall.

No 10.

*** This case is No 128. p. 6703. voce IMPROBATION.

1687. July 16. DUKE of HAMILTON against COUNTESS of CALLENDAR.

IN a reduction of a decret of non-entry, on the ground that the heir of one was not called, who might have made defences, the superior offered to produce an execution *cum processu*; which was over-ruled, because the apparent heir ought to have been called, and he could not now be called *cum processu*, the process being ended by the extracted decree.

Fol. Dic. v. 2. p. 302. Fountainhall.

No 11.

*** This case is No 70. p. 2212. voce CITATION.

1687. December. Ladies GREENOCK & MOCHRAM against ERSKINES.

A CREDITOR of the Lord Napier having pursued the debtor's heirs of tailzie, the defenders *alleged*, No process, till Mrs Brisbane, the heir of line, was called.

Answered; The pursuer was content to call the heir of line *cum processu*.

Replied; The heir of line being known to the pursuers, and the principal contradictor, should have been cited *ab initio*; and it is not enough to call her *cum processu*.

THE LORDS found no process; and remitted the pursuer to raise a new process, and to call the heir of line.

Fol. Dic. v. 2. p. 301. Harcarse, (AIRES GESTIO AND PASSIVE TITLES.)

No 69. p. 13.

No 12.