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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.

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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

be granted in this action; and the pursuer *replying*, that these heirs female were denuded of their right in the person of the defender's predecessors, to whom he might succeed *jure sanguinis*; THE LORDS found the exception relevant; and no process to be granted, while the apparent heir to these daughters were called; for this defender could not be heir *in sanguine* to that person who had bairns of his own, of whom there were descendants yet living, so that he could not be the right contradictor to maintain, or who could be convened to produce the writs made to his predecessors, there being others extant nearer in blood, as said is, to the succession, viz. the descendants of the elder brother. And where it was *replied*, That the right was devolved by the saids daughters, in the persons of this defender's predecessors, to whom he was heir in blood, the LORDS found nevertheless the exception relevant; for they found the greater necessity to summon some to represent the saids heirs female, seeing they were authors to the defenders, who were called in his right. And the LORDS found in this cause, and all the like improbations, that the clause whereby the defenders are called for production of writs, made to any other their predecessors, to whom they may succeed *jure sanguinis*, beside the clause of the summons, whereby they are called for production of the writs made to their special predecessors enumerate in the summons, such as father, good-sir, grand-sir, ought to be ruled, adjoined, and understood, as repeated in ilk predecessor libelled, viz. that the defender called, is and shall be holden to produce only such writs made to any of the special predecessors, particularly named in the summons, as to whom he may succeed *jure sanguinis*; which words, *as to whom he may succeed jure sanguinis*, the LORDS find and declare shall be holden as repeated, and subsequent to ilk predecessor contained in the summons; and that that clause is not to be taken, as if it had only relation to the general clause anent evidents made to any of the defender's predecessors, attour and beside those who are specially designed in the summons; but that it must be alike understood, both for the general and for the special. And where the like actions are pursued against parties, as heirs of provision, or of tailzie, to their predecessors, the LORDS find no necessity to summon the heir of line, where the pursuit is retrenched only to the writs concerning those lands which are provided to the heir-male, or of tailzie and provision. See IMPROBATION.

Act. Hope, Stuart, Aiton, & Nicolson.

Alt. Bellier & Monat.

Clerk, Gibson.

Fol. Dic. v. I. p. 139. Dunie, p. 325.

1628. June 28. HENDERSON against LA. KNOCK-HILL.

In an improbation by Mr James Henderson *contra* Lady Knockhill, of certain comprisings and infestments following thereupon, given by the superior of the lands of Knockhill, which were also comprised by the pursuer, likeas also he

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heir of line's right; but it would have been granted, if the pursuit had been restricted to such writs as were conceived in favour of the predecessor and his heirs male.

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In an improbation of a comprising, the clerk thereto was not found.