

1630. March 5.

E. WIGTON against E. CASSILLIS.

In a reduction and improbation, for production of writs of the lands of Lenie, made to the Earl of Cassillis's predecessors, by the Earl of Wigton his father, goodsire, or other predecessors, to whom he might be heir, or by his goodsire's brother, who had disposed these lands to his goodsire; it being questioned in this cause, if the defender should be holden first to produce, or if the pursuer should crave production before he instructed, whether his goodsire's brother had disposed these lands to his goodsire; and sicklike, where the brother was infest in these lands; seeing the defender *alleged*, that the same was his title, which should, *ante omnia*, be produced. THE LORDS found, that the pursuer should prove and instruct the same, before the defender should be holden to produce; but assigned the same day to the defender to produce, which was assigned to the pursuer to prove; that, after it was proved, the defender might instantly produce thereafter; and this summons craving production of whatsoever decreets, obtained by any of the defender's predecessors, which might affect the lands, and establish any right thereto in any other persons, this general clause was sustained, albeit the same neither bore the special name of the party, obtainer of the sentence, nor against whom, nor before what Judge, nor for what special cause, or manner of decreets, the same were. And it being *alleged*, That no process ought to be granted for any writs, made by the pursuer's goodsire's brother, or his predecessors, to the defender's predecessors, of the lands libelled; because, no person was summoned to represent as heir, or apparent heir, the said brother and predecessor, who were necessary parties to be summoned, seeing they behoved to warrant the rights made to the defender's predecessors, now called for; specially seeing the pursuer pursued, not on that member, as heir of blood to him, but as heir by progress to his goodsire, to whom the brother is *alleged* to have disposed the lands libelled; and so the pursuer was singular successor to his goodsire's brother, which brother's predecessors were *alleged* to have disposed the lands to the defender's predecessors. This allegiance was repelled, being contentiously disputed; and there was no necessity found to summon any, to represent the said brother, and his predecessors, which was found alike both in the reduction and improbation; for, albeit he were subject in warrandice, the defender may suit the same as he best may; but the pursuer is not holden to call or summon any for that end of warrandice to the defender, and he being author to the pursuer's predecessor, he needed not summon any to represent his own author. See No 128. p. 2246. voce CITATION.

Act. Advocatus &amp; Stewart.

Alt. Nicolson, Aiton, &amp; Neilson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 443. Durie, p. 500.

No 38.

In an improbation of all rights of certain lands granted by the pursuer's grand uncle, who had disposed the lands to his grandfather; it was found, that the defender was not bound to produce, till the pursuer instructed that his granduncle was infest, and had disposed to his grandfather; but the same day was assigned to the pursuer to prove, and the defender to produce.