

wherein the defender *alleging*, that he who stood heritably infeft, and in possession of the land, not being summoned to this action, no process ought to be granted therefor; for albeit the pursuer *replied*, that Gilbert Williamson, who was convened, was heritably infeft, so that he needed convene no other but him and the present possessor; yet he *duplied*, that his right was under reversion, so that his author, who still remained heritor, ought to be convened to defend in this pursuit, the absolute right being yet consisting in his person. THE LORDS found, that this defender being infeft, albeit under reversion, there was no necessity to convene any other alleged heritor; for if it were so found, there were a like reason to convene that heritor's author. And as to the reversion, the pursuer had no necessity to know the same, for it might be discharged or not as they pleased among themselves; but if that person, or any other, pleased to compear for his interest, he might be admitted.

Act. *Cunninghame.*

Alt. —.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 141. Durie, p. 562.*1636. *January 19.*OLIPHANT *against* TENANTS.

ONE Patrick Oliphant, upon an infeftment of annualrent granted to him by Sir James Oliphant, pursuing the tenants of the land for pointing of the ground; it was found by the LORDS, that no process could be granted in this action, nor the like cases (as was alleged in this process) while the party, viz. were summoned, who, in the time of the raising of this summons, stood heritably infeft in the lands libelled; neither was the reply respected, whereby the pursuer *replied*, that he needed not to summon him, seeing his heritable infeftment is but a base infeftment, granted to be holden of the giver, and was not granted by the immediate superior; so that the said heritor's right being only made by a mediate superior, he had no necessity to summon him, but it was enough to summon the persons who were heritors by infeftment from the mediate superior, which reply was repelled; and the like necessity found to cite heritors from the mediate superior, as those who were infeft by the immediate, seeing their sasines were alike extant in the public register.

Act. *Cunninghame.*Alt. *Oliphant.*Clerk, *Hay.**Fol. Dic. v. 1. p. 141. Durie, p. 787.*

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being infeft, although under reversion; and that there was no necessity to convene any other heritor, because thus it would be as reasonable to call the heritor's author; nor had the pursuer any necessity to know of the reversion, because it might be discharged.

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In a pointing of the ground, no process was found till the party was called, who, at the time of the summons, stood heritably infeft in the lands; although the pursuer replied that there was no necessity to summon him, as his heritable infeftment was but a base one, granted to be holden of the giver. The heritor must be called, not the superior.