

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.