

in its proper order, otherwise the abuses committed when the electors are unanimous must be without end, and the chusing of representatives for the burghs, reduced to a scene of the most corrupt and unconstitutional practices. In the case quoted, as the wrong admitted of a remedy in the form prescribed by the statutes, the parties neglecting that form might justly be precluded from using any other. Here the pursuers had no other way to proceed; and they have even complied with the statutes, by commencing their action within the period therein required.

“ The Lords dismissed the action as incompetent.”

Reporter, *Lord Kennet.* Act. *Ilay Campbell, Hay.* Alt. *Rat, Wight.* Clerk, *Honz.*
C. *Fac. Coll. No. 46. p. 73.*

No. 86.

1791. *May 25.*

DAVID ALLAN and Others, *against* JAMES MACRAE.

An action sustained at the instance of parties, who had united themselves into a society, under the title of Bereans, for religious purposes.

Fac. Coll.

No. 87.

* * This case is No. 27. p. 14583. *voce* SOCIETY.

1793. *February 21.* NEIL M'CALLUM *against* JAMES CAMPBELL.

In the year 1725, Neil Macindoe, proprietor of the lands of Kilchoan, resigned them into the hands of Patrick Campbell, the superior; whereupon he obtained a new charter, granting them to himself, “ in vitali reditu duran. omnibus sæ vitæ diebus, et post ejus decessum, hæredibus masculis legitime procreandis inter eum et Annam Maccallum, ejus sponsam; quibus deficientibus hæredibus masculis legitime procreandis de ejus corpore, ullo subsequente matrimonio; quibus deficientibus Duncanò Macindoe in Kilchoan, filio patris dicti Nigelli Macindoe, et hæredibus masculis legitime procreatis, sive procreandis de corpore dicti Duncanì Macindoe; quibus deficient. proximis legitimis hæredibus masculis dicti Nigelli Macindoe quibuscunque; quibus etiam deficient. ejus hæredibus et assignatis quibuscunque, hæreditarie et irredimabiliter.”

Neil Macindoe took infestment in terms of the charter, and died, leaving Mary, an only child. The succession therefore opened to Duncan Macindoe.

Duncan had only one son, who did not long survive his father. On his death, John Macindoe took up the succession under the charter, as nearest lawful heir-male of Neil; and on the 16th February, 1753, Mr. Campbell, the superior, granted him a precept of *clare constat* in that character, upon which infestment followed.

A few weeks previous to his obtaining this precept of *clare*, John Macindoe executed a disposition of the lands in favour of Mr. Campbell, containing a pro-

No. 88.

A general service as heir of line is not a sufficient title to pursue in a reduction of a right to lands on which infestment has followed, where the pursuer, if successful, must take them up as heir of provision.