

No 70.

his heir of line was not called, though the Duke alleged there was no necessity to cite him.

1687. *July 16.*—THE Duke of Hamilton having obtained a decret of non-entry against the Countess Dowager of Callander of the lands of Mummerills, as mentioned 15th December 1686, there is a reduction of it raised on this ground, That it was null, because the Earl of Linlithgow, the heir of line, was not called, who may have defences. THE LORDS found the decret null; whereon the Duke applied for a new hearing in presence, and *alleged*, That he needed not cite the apparent heir, unless he were in possession; and that, in 1683, (No 69. p. 2210.) in a non-entry pursued by the Duke of Queensberry against the Earl of Annandale, the LORDS sustained process, and allowed the heir of line to be called *cum processu*, as they had done before, between the same Queensberry and Craik of Stuarton. *2do*, The omitting Linlithgow in the decret was only a mistake; for now they produce an execution against him. *Answered*, They offered to improve it, and craved the Duke might abide at its verity; who alleged he was not further concerned than that it was truly so delivered to his writers and agents by the messenger; yet the LORDS would have him abide by it simply.

*Fol. Dic. v. 1. p. 137. Fountainball, v. 1. p. 437. & 467.*

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S E C T: XVII.

Citation in Recognition.—Regress upon Excambed Lands.

1584. *March.*K. ADVOCATE *against* M'CULLOCH.

No 71.  
The Lords found it not necessary, in a process of recognition, to call the parties in whose favour the alienation was made, altho' *vel maxime res eorum agebatur.*

THE King's Advocate and the Laird of Bargammie as having the title of the lands and barony of Cardmangs, become in our Sovereign Lord's hands by way of recognition, pursued M'Culloch, and her husband for his interest, the heritrix of the same lands and certain other persons, to whom there was an alienation made of the one half of the lands, by the consent of our Sovereign Lord, immediate Lord of the said lands. It was *alleged* in *ingressu litis*, because the K.'s Advocate and the donatar passed frae all the vassals to whom the alienations were made, that they might not pass frae them, and they ought to have been summoned *ab initio*, and had good interest to defend the cause *quia eorum res agebatur*, for if there were decret of recognition given, their infestments would fall, and they had but to seek warrandice against the heir, who wad tyne nothing to warrand unto them. It was *reasoned* upon the

other part, That the King's Majesty and his donatar was not obliged to know any other tenant or sub-vassal in the pursuit of recognition, but only the immediate tenant to our Sovereign Lord. Practics were alleged *hinc inde*, but nothing produced, and certain processes of recognition that were led in the time of King Ja. the 4th were shown to the Lords, whereintill it was not found to be of necessity to summon the sub-vassals, or them to whom the alienations were made. THE LORDS therefore found, that it was not of necessity to summon the sub-vassals.

*Fol. Dic. v. 1. p. 138. Colvil, MS. p. 400.*

No 71.

1629. July 27. L. of WARDIS against L. BALCOMY.

IN a declarator for regress again to the lands excambed, by reason of eviction of lands which were given in excambion; it is not necessary for the pursuer, who for eviction of the lands given in exchange, pursues to be restored to his lands which he gave therefore, to summon any parties to that process, but the party or his heirs with whom he excambed, and the person then heritable proprietor, if any be possessors of these lands; and it is not necessary to summon any intervening mid persons, acquiring right from the excambers, betwixt them and the saids last heritable possessors, albeit these persons intervening be authors in his right to the present possessor convened, and subject in warrandice thereof.

Act. *Nicolson & Russel.* Alt. *Advocatus & Stuart.* Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 138. Durie, p. 455.*

No 72.  
In a declarator for regress to excambed lands, because of eviction of the lands given in excambion, it is only necessary to cite the party, or his heirs, with whom the excambion was made, and the present heritable proprietor of the excambed lands; but no need of citing his intermediate authors.

## SECT. XVIII.

Citation in Simple Reductions of Voluntary Rights.

1615. July 26. DOUGLAS against LAIRD of WAITHTON.

IN an action pursued by Sir Archibald Douglas of Quhitingham *contra* the Laird of Waithton, for reducing his infestment of the lands of Yeldie, granted to him and his predecessors, by the Earls of Bothwell, THE LORDS found that there was no necessity to summon the Lord Buccleugh, who was superior to the Laird of Waithton.

*Fol. Dic. v. 1. p. 138. Kerse, MS. fol. 236.*

No 73.  
In a reduction of a vassal's infestment of his lands, there is no necessity to summon the vassal's superior.