

as are in the like case, or have been vassals to the lords, who have obtained erection of the benefices after rights made, by virtue of the act of annexation, to others, of lands to be holden of the king; but the doubt remains yet undetermined, for, in this decision, there was a necessity for Sir John to produce, seeing he was called to produce his evidents made to him by the priors, and sensine as false, the pursuer who might do all that the priors might have done, had reason to see if Sir John had right to the lands or not; but, if the writs were produced, it appears yet to remain free and unprejudged to the excipient, to dispute, in its own time and place, that he is not his vassal, but only the king's.

*Vid.* 7th February 1627, John Stuart.

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1623. June 11. The KING and the EARL of HUME *against* CRANSTON.

LITISCONTESTATION being made in the action of improbation pursued at the King's instance and the Earl of Hume's against Cranston of Moriston, an incident being raised, only at the Earl of Hume's instance, for proving of such points as, by the act of litiscontestation, were admitted to his probation; which incident was not also raised at the king's advocate's instance;—the Lords, notwithstanding thereof, sustained the incident, because the advocate concurred and declared that he insisted therein with the party.

*Act.* Hope and Belshes. *Alt.* Nicolson and Craig. *Vid.* 10th February 1624, E. Buckcleugh *against* Lord Yester, and the cases there.

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1623. June 23. The EARL of MARR *against* LORD ELPHINGSTOUN.

In an improbation pursued by the Earl of Mar, against the Lord Elphingstoun, as use is in such cases, there being a general clause in the summons, whereby the defender was called to produce, by and attour the particular evidents especially set down in the summons, all and whatsoever writs and evidents, made by such or such persons, of the lands libelled, as such summons usually reports; and incident being used by the defenders, for recovering of the same writs specially libelled; in the which incident the defenders, who were thereby called as havers, were also called for having all and sundry other writs, conform to the general clause contained in the summons of improbation: which general clause of the incident being quarrelled by the pursuers of the principal cause of improbation, alleging that that generality could not be sustained in that incident, because no person could be convened as haver, except of some particular designed writ, and not of such generality, whereupon no improbation could be led; and albeit that clause was contained in the principal summons of improbation, yet that could not be a reason to sustain that general clause in the exhibition or incident, seeing, in the improbation, he was not holden to prove any thing, but conceived his libel *negative*, that there were never such evidents, and if any was, the same were false: against the relevancy of the which generality