

keep the same for the warrant of the retour, nor the Judge before whom the service was deduced, are called; for the LORDS found, That no certification ought to be granted against the service, except either the Director of the Chancery, or the Judge and Clerk, before whom the service was deduced, had been called with the party to produce the same; and also the LORDS found, That the retours of elder dates, before the year 1550, ought not to be decerned to make no faith for non-production, where the principal service, sealed by the assizers, is produced, albeit the same be not extant at the Chancery, nor extracted out of the same. See RETOUR.

Act. *Nicolson elder & Stuart.*

Alt. *Hope & Aiton.*

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 139. Durie, p. 111.*

1627. *January 31.* L. LAWRISTON *against* TENANTS.

IN an improbation at the instanse of the L. Lawriston against the tenants of South-houses, the evidents made to certain persons, authors to the defenders, being called to be improven; and the defenders *alleging*, That no process ought to be granted against the writs, except the apparent heirs to the persons whose writs were quarrelled in this action, were called thereto; this allegiance was repelled, seeing the defenders condescended not specially who the persons were who were apparent heirs, and who should be summoned, without the which were condescended upon, there was no necessity to summon them. The like was done before, *anno 1619*, in an improbation betwixt the E. Winton *contra* Lo. Corstorphin.

Act. *Mowat,*

Alt. —.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 139. Durie, p. 266.*

1627. *March 15.* E. KINGHORN *against* L. GRANGE.

IN a reduction at the instance of the E. Kinghorn, against the L. of Grange Kirkcaldy, for reduction of an infeftment granted by the E. Kinghorn's forebears, designed in the summons, to umquhile Sir William Kirkcaldy of Grange, of certain lands of the barony of Kinghorn, pertaining to the said pursuer's predecessors, in the which process the defender was called as apparent heir to that person, to whom the said infeftment, now desired to be reduced, was granted,— THE LORDS found this alleged dilator relevant, proponed by the said defender, viz. that he was denuded in favours of George Foulis, who was heritably infeft in the same lands by a public infeftment, holden of the King's Majesty; and therefore they found no process until the said George Foulis were summoned to this reduction, he standing infeft in the lands. And so the LORDS found, that

No 80.

ty is called in the process; and neither the director of the chancery, who is presumed to have the service, and to keep the same for the warrant of the retour, nor the judge and clerk before whom the service was deduced, is called.

No 81.

In an improbation, the evidents made to the defender's authors being called for; found, that it was not needful to call the apparent heirs of these authors, unless the defender would specially condescend who the apparent heirs were.

No 82.

An apparent heir being called in a reduction and improbation of a right to lands, granted to one of his predecessors, this dilator proponed by him was sustained, viz. that he was denuded of the lands in favour of another, who