

S E C T. XXVI.

Citation in Process of Exhibition.

1611. *November 26.* LORD SANQUHAR *against* PADZANE.

No 119.

My Lord Sanquhar having pursued the relict of umquhile Padzane, for exhibition and delivery to him of the count books of the sheriffdom of Dumfries, to which Padzane was clerk; the LORDS found it not necessary to summon the heirs and executors of the Sheriff-clerk, but only the haver, because these books are public, and pertain to the Judge, and not to the heirs of the defunct.

Fol. Dic. v. 1. p. 142. Haddington, MS. No 2313.

1623. *December 6.* FOTHERINGHAME *against* FOTHERINGHAME'S Relict.

No 120.

IN an action pursued at the instance of ——— Fotheringhame, as heir to umquhile Alexander Fotheringhame, uncle to the L. of Powrie, against the Relict of the said umquhile Alexander, and against certain others, who were convened at the heir's instance, for production of certain heritable bonds and obligations made to the defunct by certain persons his debtors, enumerate in the summons, the LORDS found, that the debtors needed not to be summoned in that action of exhibition, who were makers of the bonds; but sustained the process without their citation, seeing there was no execution craved against them by that pursuit, and that the relict, and others havers, were convened for production of these bonds, which were in the defunct's possession the time of his decease, as his own proper writs, and were thereafter intromitted with by the relict, or by the other defenders, who, albeit they were strangers, might be also convened for production, without calling of the makers of the obligation.

In an exhibition of some heritable writs, at the instance of an heir against his father's relict, and some other persons as havers, the Lords found that the debtors needed not to be summoned, as there was no execution craved against them.

Act. Hope, Aiton, et Craig.

Alt. Nielson et Oliphant.

Clerk, Gibson.

Fol. Dic. v. 1. p. 142. Durie, p. 87.

1627. *March 10.* DICK *against* SKELDON.

No 121.

IN an action for exhibition and delivery of writs of comprised lands, at the instance of William Dick, against Skeldon, haver of the writs; the LORDS found, that a compriser not infest, could not call for delivery of charters and sasines of

A compriser cannot seek for production of any

No 121.
writs of the
lands comprised,
nor them to be copied
to him, without calling
the debtor to
the pursuit.

lands, nor such real rights, himself not being really infeft; but that he might call for production of contracts and bonds, the same being comprised: And also found, that a compriser could not seek production of any writs of lands comprised, nor the same to be copied to him, except the party from whom he comprised had been called to that pursuit. *See TITLE TO PURSUE.*

Act. *Stuart.*

Alt. *Nicolson.*

Clerk, *Scot.*

Fol. Dic. v. 1. p. 142. Durie, p. 289.

1636. *March 17.* REID *against* MR HARY GIBSON.

No 122.
A relict of a
debtor was
pursued to
exhibit and
deliver a
bond. She
voluntarily
exhibited
it; but the
Lords found
no process,
till the de-
funct's repre-
sentatives
should be
cited.

UMQUHILE John Reid, by bond being obliged to Hugh Reid minor, son to George Reid of Daldilling, in 3000 merks, the said Hugh, and his father as administrator, pursue the relict of the said umquhile John Reid, maker of the bond, and her second husband, for exhibition and delivery thereof to him; wherein the Lords found no process ought to be granted (albeit the said relict and her spouse exhibited voluntarily the bond, being in her hands ever since the death of her husband, maker thereof) while some person were summoned to represent the defunct debtor, alleged maker of the same; seeing it was never libelled in the summons, that ever the bond was the pursuer's evident, or ever was delivered to him, but produced now after his decease by his relict, it being amongst her husband's writs the time of his decease; and this was so found, being proponed by Mr Hary Gibson, who was creditor to umquhile — the debtor, and his brother, and the daughter, only bairn of the debtor's brother, and so who is that only person, who was apparent heir to the debtor, and who thereby was found to have interest to propone the same.

Act. —

Alt. *Nicolson at Stuart.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 142. Durie, p. 805.

SECT. XXVII.

Citation in Incident Diligences.

1624. *February 10.*

KING'S ADVOCATE and LO. YESTER *against* LO. BUCCLEUGH.

No 123.
In the case
of a party's
craving an
incident

In an action of improbation pursued at the King's Advocate's instance, and the Lo. Yester, against the Lo. Buccleugh, an incident being used at the Lo.