

be granted in this action; and the pursuer *replying*, that these heirs female were denuded of their right in the person of the defender's predecessors, to whom he might succeed *jure sanguinis*; THE LORDS found the exception relevant; and no process to be granted, while the apparent heir to these daughters were called; for this defender could not be heir *in sanguine* to that person who had bairns of his own, of whom there were descendants yet living, so that he could not be the right contradictor to maintain, or who could be convened to produce the writs made to his predecessors, there being others extant nearer in blood, as said is, to the succession, viz. the descendants of the elder brother. And where it was *replied*, That the right was devolved by the saids daughters, in the persons of this defender's predecessors, to whom he was heir in blood, the LORDS found nevertheless the exception relevant; for they found the greater necessity to summon some to represent the saids heirs female, seeing they were authors to the defenders, who were called in his right. And the LORDS found in this cause, and all the like improbations, that the clause whereby the defenders are called for production of writs, made to any other their predecessors, to whom they may succeed *jure sanguinis*, beside the clause of the summons, whereby they are called for production of the writs made to their special predecessors enumerate in the summons, such as father, good-sir, grand-sir, ought to be ruled, adjoined, and understood, as repeated in ilk predecessor libelled, viz. that the defender called, is and shall be holden to produce only such writs made to any of the special predecessors, particularly named in the summons, as to whom he may succeed *jure sanguinis*; which words, *as to whom he may succeed jure sanguinis*, the LORDS find and declare shall be holden as repeated, and subsequent to ilk predecessor contained in the summons; and that that clause is not to be taken, as if it had only relation to the general clause anent evidents made to any of the defender's predecessors, attour and beside those who are specially designed in the summons; but that it must be alike understood, both for the general and for the special. And where the like actions are pursued against parties, as heirs of provision, or of tailzie, to their predecessors, the LORDS find no necessity to summon the heir of line, where the pursuit is retrenched only to the writs concerning those lands which are provided to the heir-male, or of tailzie and provision. See IMPROBATION.

Act. Hope, Stuart, Aiton, & Nicolson.

Ak. Belcher & Monat.

Clerk, Gibson.

Fol. Dic. v. I. p. 139. Dunie, p. 325.

1628. June 28. HENDERSON against LA. KNOCK-HILL.

IN an improbation by Mr James Henderson *contra* Lady Knockhill, of certain comprisings and infestments following thereupon, given by the superior of the lands of Knockhill, which were also comprised by the pursuer, likeas also he

No 83.

heir of line's right; but it would have been granted, if the pursuit had been restricted to such writs as were conceived in favour of the predecessor and his heirs male.

No 84.

In an improbation of a comprising, the clerk thereto was not found.

No 84.
 necessary to
 be summoned,
 although the
 warrants
 thereof were
 called for ;
 as he was
 not a public
 person, but
 chosen at the
 pleasure of
 the compri-
 ser, who
 chuses his
 clerk at his
 own hazard.

was infest thereupon by the superior ; the defender *alleging*, that no process could be granted, because the warrants of the defender's comprising were called to be produced and improven, and the clerk to the comprising, who kept the saids warrants, not being called in this process, no process ought to be granted therefor ; likeas she *alleged*, that seeing the infestments made to her by the superior were quarrelled, the superior ought to be called ; both these exceptions were repelled, for the clerk to the comprising was not found needful to be summoned, seeing he was not a public person, but in this case of comprising, was but a private person chosen by the election, and at the pleasure of the party compriiser, who, upon his own hazard, chuses his clerk, and so who must be answerable to produce the warrants of his own evidents, and to be liable in law for the same, and not the clerk. And the LORDS found no necessity to summon the superior, seeing the pursuer quarrelled not the superior's right, but the right personally made to the defender by the superior of the property, which superior was also granter of the pursuer's right.

Act. *Advocatus.*

Alt. *Kinross.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 139. Durie, p. 378.

No 85.
 Found that
 sub-vassals
 being in pos-
 session ought
 to be called
 in an impro-
 bation against
 the vassal
 their author,
 because they
 could not be
 unknown, be-
 ing heritable
 possessors ;
 but as to te-
 nants brui-
 ing lands by
 tacks, or he-
 ritors brui-
 ing by sub-
 tacks their
 own teinds,
 The Lords
 thought
 that it could
 not be so well
 known that
 they had
 right, and so
 were not par-
 ties necessary
 to be called.

1668. *January 23.* The TOWN OF GLASGOW *against* —.

THE TOWN of Glasgow having a right from the Bishop to the parsonage teinds, pursued a spuilzie. It was *alleged* for some of the defenders, That they possessed by sub-tacks from Blantyre tacksman. It was *answered*, That certification was granted against the principal tack, and that the sub-tacks were void in consequence. It was *replied*, That the defenders were not called to the improbation ; and that they being in possession, the collusion or negligence of their author cannot prejudice them.

THE LORDS, upon a debate among themselves, thought, that sub-vassals being in possession, ought to be called in an improbation against the vassal their author ; because they could not be miskenned, being heritable possessors ; but as to the tenants bruiing lands by tacks, or heritors bruiing by sub-tacks their own teinds ; they thought, that it could not so well be known that they had right, and so were not parties necessary to be called ; and therefore, before answer, they ordained to condescend upon the manner and quality of their possession, and whether it was such as the Bishop could not but know.

Act. *Stinclair et Lockhart.*

Alt. *Cunninghame.*

Fol. Dic. v. 1. p. 139. Dirleton, No 145. p. 58.