

C I T A T I O N.

S E C T. I.

Who must be Cited in a Process on the Passive Titles.

1666. *June 23.* THE VISCOUNT OF ARBUTHNOT *against* ANNA KEITH.

IN a pursuit at the instance of the Viscount of Arbutnot, as donatar to the ward and marriage of Mary and Katharine Keiths, bairns and heirs portioners to umquhile John Keith, brother to the Earl of Marischal; the donatar insisting only at present against Anna Keith, and her husband for his interest, it was alleged no process, because all parties having interest were not called, viz. The Representatives of Katharine Keith, one of the heirs-portioners now deceased; and that the probation against the defender might prejudice Katharine Keith's Representatives in the avail of the marriage.—THE LORDS repelled the allegiance, and found process against one of the heirs-portioners, albeit the Representatives of the other heir-portioner were not called.

Fol. Dic. v. 1. p. 131. Newbyth, MS. p. 63.

No 1.
The Lords sustained process against one of more heirs-portioners, although the representatives of the other were not called.

1672. *January 18.*

The MASTER of SALTOUN *against* LORD SALTOUN and ARTHUR FORBES.

THE Master of Saltoun, as assignee to a debt due by the deceased Lord Saltoun, pursues this Lord Saltoun as heir of line to him, or as charged to enter heir, and he having renounced, he insists for adjudication. Campearance is made for Arthur Forbes, as having disposition from the deceased Lord Saltoun of his estate, who *alleged* that this adjudication was by collusion betwixt the father and the son, to burden the estate disposed to him, and therefore had interest to defend; and alleged that all parties having interest were not called, viz. the rest of the heirs-portioners of the deceased Lord Saltoun; for this Lord Saltoun being heir of line by a woman, the rest of her sisters and their representatives are also heirs-portioners, and must be called; who if they were called, they or some of

No 2.
Found, that process was not to be sustained upon any debt of a defunct, unless the whole heirs-portioners were called.