The reſpoudent made defences, and after ſundry proceedings the Court on the 13th of July 1721, "found that the qualifica-"tions of truſt alledged by the appellant, are not relevant and "therefore aſſoilzied the reſpondent and decerned."

The appellant gave in ſeveral petitions againſt this interlocutor, but the Court on the 28th and 29th of July 1721, and 9th of February 1722, "adhered to their former interlocutor."

Entered, 23 Oct. 1722.

The appeal was brought, "ſeveral interlocutory ſentences or "decrees of the Lords of Seſſion of the 13th, 28th, and 29th days "of July 1721, and 9th of February 1722."

(The particular circumſtances of the caſe are ſtated at conſiderable length in the appeal caſes, but not with ſufficient diſtinctneſs, to render an abridgement of them uſeful.)

Judgment, 11 Feb. 1723.

After hearing counſel, *It is ordered and adjudged that the ſaid petition and appeal be diſmiſſed, and that the interlocutory ſentences or decrees therein complained of be affirmed.*

For Appellant, *Ro. Dundas.* *C. Talbot.*
For Reſpondent, *Dun. Forbes.* *Will. Hamilton.*

Caſe 98. Alexander Murray, of Broughton, Eſq; *Appellant;*
George Bullerwell, Gentleman, - *Reſpondent.*

Ex parte (a)

12th *Feb.* 1722-3.

Proceſs.—In a competition between two perſons, claiming to be heirs to an eſtate, the inqueſt refuſed to retour either of them. One of the parties in an action of reduction and declarator, calls the other as a defender; a third claimant now craves to be admitted, as a defender in this action, ſtating himſelf to be in the ſame degree of propinquity with the other defender, which the purſuer acknowledged. The Court having refuſed to admit this third party as a defender in that action, the judgment is reverſed, *ex parte.*

JAMES Earl of Annandale died about 80 years ago, leaving no heirs of his own body, and in default of them, his eſtate went to the daughters of Sir James Murray of Cockpool, paternal uncle to the ſaid earl. The appellant, and the Viſcounteſs of Stormont, were deſcended from theſe daughters.

The reſpondent laid claim to the eſtate of the ſaid James Earl of Annandale, in the character of his neareſt heir; and took out a brieve from Chancery for ſerving himſelf neareſt heir; and gave in his claim to the inqueſt accordingly. The Viſcounteſs of Stormont, appeared as a party by her counſel, and objected to the evidence brought by the reſpondent, as no wiſe ſufficient to prove that he was heir, or at all related by deſcent of lawful iſſue

(a) This is given entirely from the appellant's caſe only, no appearance having been made for the reſpondent.

to the ſaid earl; and at the ſame time ſhe having alſo taken out a brieve from chancery, put in her own claim, and inſiſted that ſhe ſhould be retoured as neareſt heir to the ſaid earl. The jury, however not being ſatisfied with the evidence adduced by either of them, gave verdicts againſt them both, and refuſed to retour either of them as neareſt heir to the Earl of Annandale.

The reſpondent thereupon brought his action before the Court of Seſſion, for ſetting aſide the verdict of the jury as erroneous, and to have it found, that he was neareſt heir to the earl. To this action, the reſpondent called the Viſcounteſs of Stormont as a party; but took no notice of the appellant, who (as he ſtates) is the undoubted heir portioner of the ſaid Sir James Murray of Cookpool, father's brother of the ſaid earl, with the ſaid Viſcounteſs of Stormont, and ſo equally entitled with her in the ſaid earl's ſucceſſion.

The appellant, however, appeared for his intereſt by his counſel, in ſupport of the verdict complained of by the reſpondent, and prayed to be heard againſt the reſpondents' claim. And the Court on the 28th of February 1722, "found that the appellant ought to be admitted for his intereſt."

The reſpondent reclaimed, ſetting forth that he had not made the appellant a party; but that the action he was carrying on was of no prejudice to the appellant, the ſcope of it being only to ſet aſide an erroneous verdict, given by the jury to the prejudice of the reſpondent: and that it would be ſtill entire, and more proper for the appellant to appear before another jury, which would be called after the erroneous verdict was ſet aſide, and there to object againſt the reſpondent's claim.

After anſwers for the appellant, the Court on the 21ſt of June 1722, "altered their former interlocutor, and found that the appellant could not be admitted in that action." And to this interlocutor the Court adhered on the 30th of the ſame month of June and 1ſt of December thereafter.

The appeal was brought from "ſeveral interlocutory ſentences or decrees of the Lords of Seſſion of the 21ſt and 30th days of June, and an interlocutor of the 1ſt of December 1722." Entered, 10 Dec. 1722.

Heads of the Appellant's Argument.

Though the reſpondent has not made the appellant a party to the action, that was the reſpondent's fault and error; but this cannot hinder the appellant from appearing as a party for his own intereſt, and to defend in an action, the ſcope of which was to defeat his titles to the eſtate, and ſucceſſion of the Earl of Annandale. Beſides, by the nature of the brieve, all perſons having intereſt are called, by what is named in the law of Scotland an edictal citation.

The reſpondent admitted, that the appellant had the ſame intereſt and concern with the Viſcounteſs of Stormont, and conſequently ſince ſhe is a proper party to the action, the appellant muſt be ſo too. The appellant likewiſe admitted, that the appellant was a proper party to object to his claim before the jury, and to

have insisted for such a verdict as the jury gave, consequently he must be a proper party to appear in support of that verdict, and to justify it now that it is given.

Journal, 12 Feb. 1722-3.

Whereas this day was appointed for hearing counsel upon this petition and appeal; counsel appearing for the appellant, but no counsel for the respondent; and the appellant's counsel being heard and withdrawn, It is ordered and adjudged, that the interlocutory sentences of the 21st and 30th days of June, and the interlocutor of the 1st of December last, complained of in the said appeal be reversed; and that the interlocutor of the 28th of February, last whereby it is decreed, "that the appellant ought to be admitted for his interest" be affirmed.

For Appellant, *Ro. Dundas. Dun. Forbes.*

Case 99. Thomas Rigge, of Mortoun, Esq; - *Appellant;*
Alexander Abercrombie, of Tullibodie, Esq; *Respondent.*

18th March 1722-3.

Negotiorum Gestor.—The respondent having sent money by the appellant, to be by a third person laid out in stock, in his own name; on the death of this third person the appellant could not warrantably lay out the respondent's money in stock, in his the appellant's name.

Proof.—In this case the son of the person deceased, having by letter given the first notice of the transaction to the respondent, and mentioned that the appellant had informed the writer of the letter, that he had given the respondent his option to stand to the bargain or not, this letter is held to be proof of such option tendered.

IN August 1720, some communications took place between the appellant and respondent, relative to the investing of money in the public funds. The appellant being about to set out for London, the respondent delivered to him two York Buildings Co. bonds of 100*l.* each, with an open letter, addressed to William Baird, of Auchmedden, Esq., then in London: This letter was of the following tenor: "Edinburgh, 9th August, 1720. Dear "Cousen, Receive from the bearer Mr. Thomas Rigge of "Mortoun, advocate, two York Buildings bonds of 100*l.* sterling "each, bearing interest since 23d February last, payable 23d "inst.; the interest is 6*l.*; the one is marked letter A. (No. 9.) "the other is marked letter A. (No. 309.) I have filled up your "name in the indorsation (*a*) because I design you should put it "in stocks for me till I raise more. If South Sea subscriptions "can be purchased at 5, or 6, or 7 hundred, for so much ready "money, Mr. Rigge will join the equivalent sum of mine in "ready money; and if you can procure us credit, if he desire "it for the surplus value of a subscription, I shall make the "credit good as you, and he shall adjust the sum, either upon our

(*a*) These bonds were payable to bearer, and needed not indorsement.

"bond