

No 26.
processu, that
 his author
 had been in-
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predecessors to the defender's, of the lands of Lenzie and Thankerton, the pursuer libelled his interest as heir to John Lord Fleming, his grandfather, who had right to the lands libelled by disposition of James Lord Fleming his brother, the pursuer's grand uncle. *Alleged*, No process, because the pursuer shewed not where ever James (who disposed the lands libelled to John his brother) was infest. *Answered*, Offered to prove it *cum processu*. *Replied*, He could not, it being a part of his interest, but he should have verified it *in ingressu litis*. "THE LORDS sustained it to be proved *cum processu*, but before the defender should be obliged to produce, ordained it to be done;" for if that had not been shewn, the pursuer could have had no interest to call for the defender's writs. The same answer was given to another allegiance, that he shewed not where that James was heir to Malcolm Lord Fleming, who was author to the Earl of Cassillis.

Next *alleged*, no process, because none was summoned to represent that James Lord Fleming, or Malcolm one of his predecessors, author to the defender, who would be obliged to warrant the defender. "THE LORDS found, that there was no necessity for the pursuer's summoning any who be obliged in warrandice to the defender, or know them;" but that the defender himself, if he pleased and knew of any such, might intimate the plea to them.

Spottiswood, (REGALITY.) p. 271.

*** Durie's report is No 38. p. 6633., *voce* IMPROBATION.

No 27.

1630. March 20. ARCH-DEAN of ROSS *against* M'KENZIE.

THE Archdean of Ross pursues M'Kenzie of Loquhane for reduction of a tack set by his predecessors to _____, without consent of the chapter, which _____ had made the said M'Kenzie assignee to the tack. It was *alleged* by M'Kenzie, That all parties having interest were not summoned, viz. his cedent, to whom the tack was principally set. It was *answered*, That there was no necessity to summon the cedent, because he was denuded in favours of the assignee, and by virtue thereof in possession. THE LORDS found, that the first tacksman should be summoned.

Auchinleck, MS. p. 187.

No 28.

1630. July 2. DOUGLAS *against* JOHNSTON.

A MOVEABLE bond may be reduced *ex capite inhibitionis*, in so far as infestment or comprising has followed thereupon.

Auchinleck, MS. p. 187.

*** Durie's report is No 17. p. 6947., *voce* INHIBITION.