

The Lords refused this (4th February) and a second reclaiming petition, without answers.

No. 94.

Lord Ordinary, *Abercromby*. For the petitioner, *Cullen, Hagart*. Clerk, *Home*.  
*D. D.* *Fol. Dic. v. 4. p. 316. Fac. Coll. No. 107. p. 238.*

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SECT. XXII.

In Actions at the Superior's instance, who must be called?—CONCURSUS ACTIONEM at the Superior's instance.

1668. *February 22.* GAVIN COCHRAN *against* \_\_\_\_\_.

Gavin Cochran, as donatar to the recognition of certain lands, holden ward of my Lord Cochran, pursues the vassal, as having alienate the major part, and also the sub-vassal, to hear and see it found and declared, that the lands had recognosced by the alienation made by the vassal to the sub-vassal. It was alleged for the sub-vassal that he was minor, and therefore during his minority, *non tenetur placitare super hæreditate paterna*. It was answered, that that holds only in disputing the minor's rights, but is not sufficient against the obligation or the delinquency of the defunct. *2dly*, The party principally called in this process, is the vassal who is major, and whose fee falls to the superior by his alienation, and the sub-vassal's right falls only in consequence, so that no privilege of the sub-vassal can hinder the superior to declare the recognition of his immediate vassal.

The Lords repelled the defence, and sustained process.

*Stair, v. 1. p. 531.*

No. 95.

Process sustained, notwithstanding the minority of a sub-vassal called in an action of recognition.

1715. *February 22.*

THOMAS SPENCE, Writer in Edinburgh, *against* Sir ADAM WHITEFOORD of Blairquhan.

Sir Adam being superior of some part of the estate of Dalvennan, raised reduction and improbation against Shaw of Keirs, from whom the said lands had been purchased by John Binning: In which summons he also calls the said John, as he who had been in the possession of the said lands; wherein he calls for production of all their predecessors' writs, &c. and at length, in February, 1707, obtains a decret of certification: But Thomas Spence having, after citation in this process, but before pronouncing decret, led an adjudication, he now charges Sir Adam,

No. 96.

A superior, in an action of reduction and improbation, need not call adjudgers from his vassals.