

1672. February 6. MURRAY *against* MURRAY.

No 12.

IN a reduction and improbation, the Advocate alone cannot insist for certification, if the party's interest be taken off.

Fol. Dic. v. 1. p. 526. Stair.

* * * This case is No 18. p. 4799, *voce* FORUM COMPETENS.

1680. January 20.

The EARL of Southesk *against* The LAIRD of Melgum and Others.

No 13.

There are mutual declarators betwixt the Earl of Southesk and the Heritors, about the muir of Montromont. The Earl insisting to declare his right in this manner, viz. that King Robert III. granted an heritable right to John Tulloch, to keep the muir of Montromont, for the use of the King's hunting, and to exact *quatuor denarios* of the head of every beast pasturing thereon, and for every day's pulling of heather, and casting of turfs, with certain tofts in the muir used and wont, with power to rive out any part of the muir, and apply it to his own use; of this right there is no progress till the year 1581. And then there is a charter granted to one Wood of the keeping of the said muir, expressing seven tofts particularly, and bearing a power to labour the said muir, or any part thereof, for Wood's proper use. This charter is confirmed by the King in *anno* 1588, with a *novodamus*, whereof Southesk shows a progress unto himself, who stands infest in the same terms. The defenders crave their right of common pasturage and fuel through this whole muir, to be declared free of any burden; whereupon the Lords having ordained the parties to produce all the writs they would make use of, and appointed two of their number to visit the muir, and there to take witnesses for either party of their possessions and interruptions; which now coming to be advised, it did appear that this muir is of great extent about 20 miles in circuit, and that two tofts, one in the east, and one in the west end of the muir, having always been, and yet are labour-ed by the Earl and his authors past memory, that the Earl had used interrup-tions by hounding of the defender's goods, nine years before the said visitation; yet the defenders proved 50 years possession of promiscuous pasturage of the whole muir, but that there are particular parts of the muir, nearest to the He-ritors' property, called their Firths, from which they debarred others from pul-ling of heather, and casting of fuel, but pasturage was promiscuous through all, except only Ardivy, who proved not 40 years peaceable possession, before the Earl's interruption. The Heritors *alleged*, That they had proven sufficient-ly by their titles produced, that their predecessors and authors were infest in

In a compe-tition be-tween two rights, both connecting with the King, the Lords would not allow the advocate to concur with the one a-gainst the other, with-out a special warrant in writing.