

1682. February.

LADY HISLESIDE and her Husband *against* BAILLIE of LITTLEGILL.

No 7.

THE pursuer of an improbation calling for writs flowing from special authors whom he had not cited, and craving the defender might take a term to produce;

Alleged for the defender; That he could not be obliged to take a term, in respect his authors were not called; for though private and unknown authors may be called *cum processu* to the first term, when condescended on by the defender; yet when writs are called for, as flowing from special authors, these authors ought to be cited *ab initio*; because they might propone a defence against the taking of terms.

THE LORDS would not sustain process for taking of terms, till the authors mentioned in the libel were called, although it was usual not to libel or fill up the summons till immediately before the outgiving of the process, and would not allow them to be cited *cum processu* to the first term of production; and yet the King's officers are allowed to be cited *cum processu*, Duke of Buccleuch and Scot, *contra* Scot of Burnfoot.—See APPENDIX.

Fol. Dic. v. 2. p. 302. Harcarse, (IMPROBATION AND REDUCTION.) No 526.

p. 146.

1682. December. LORD ABERDEEN *against* PITCAIRN.

No 8.

IN a general declarator of a defunct's escheat, it being *objected*, That the nearest of kin were not called, the LORDS allowed them to be cited *cum processu*.

Fol. Dic. v. 2. p. 301. Harcarse.

* * * This case is No 67. p. 2209. *voce* CITATION.

1684. December 9. NAIRN *against* NAIRN.

No 9.

MARGARET NAIRN, pursuing the Lady Nairn to pay a debt contained in the Lord Nairn her father's bond, as heir to him; she *alleged*, No process, because all parties having interest are not called, viz. my Lord Athole's son, her spouse. *Answered*, She cannot pretend that she is in the case of a marriage, they being both but infants, not capable of marriage, only there are *nuda sponsalia*, and a contract of marriage betwixt them, to be consummated *de futuro*; and either may resile. THE LORDS, on Edmondston's report, repel the dilatory defence,