

1665. *January 11.* MARGARET ARNOT *against* MR ROBERT ARNOT.

MARGARET ARNOT pursues a reduction of a decret of exoneration, obtained by William Arnot, her uncle, and executor to her father.—It was *alleged* for Mr Robert Arnot, son and successor to the said William, That all parties having interest were not called, viz. the creditors and legatars, who were concerned in the event of the reduction ; for if their sums and discharges were not allowed, according to the exoneration, the defender behoved to return upon them for payment ; and therefore they ought to be called to defend their interest.

THE LORDS repelled the defence, and found no necessity to call the creditors and legatars, but that the defender might intimate the plea to them.

Fol. Dic. v. 1. p. 138. Stair, v. 1. p. 248.

* * Newbyth reports the same case thus :

IN a reduction of a decret of exoneration, pursued by William Barber and Margaret Arnot against Mr Andrew Arnot, wherein it was *alleged* there could be no certification, because the creditors and legatars of umquhile John Arnot, to whom Mr Andrew Arnot, the defender, his executor, had made payment of their debts and legacies, and whereupon the decret of exoneration was recovered, were not called.—THE LORDS found there was no necessity to call the legatars and creditors of the defanet ; that the not calling of them could not stop certification ; but that the defender might intimate the plea to them.

Newbyth, MS. p. 17.

SECT. XX.

Citation in Reductions and Improbations.

1622. *November 26.* EARL OF MARR *against* LORD ELPHINSTONE.

THE Earl of Marr and Lord Erskine pursued the King's Treasurer, Advocate, and the Lords Elsphinstone and Kildrummie, for production and reduction of a testimonial or decret pronounced by the Justice General, and Sheriff of Aberdeen, in a Justice Ayre, in *anno* 1457, annulling the Lord Erskine's title to the Earldom of Marr, and serving the Lord Erskine's brief *negative, &c.* The defenders having produced the Lord Elsphinstone's infestments, and having taken a day of their own consent to produce the said testimonial or sentence ; of their

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No 78.

Reduction of a decret of exoneration, sustained against the executor, without calling the creditors or legatees.

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The clerk register found to be a necessary party to be summoned, where the King's writs in his keeping are called for to be reduced.

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own consent reserving to the King's Advocate his defences against the certification of the summons ; at the day assigned by the act, the Advocate refused to produce, *alleging*, that no process should be granted, because the Clerk of register was not called, who was a necessary party, as keeper of all the King's writs and evidents. It was *answered, 1st*, that certification should be given against the decret and testimonial, because they had taken a day of their own consent to produce it, *2do*, The Clerk of register was not keeper of the sentences, except such as were given by the Parliament, Session, or Chequer ; but sentences pronounced by the Justices, Sheriffs, or other Judges, to which Courts he was not clerk, were not esteemed to be in his keeping, but all the King's Officers had their own charge and trust, as the secretary of warrants passing the signet ; the Privy Seal had its warrants and register, the Director of the Chancellery briefs and services, the Justice-Clerk, sentences of justice courts and perambulations, *et sic de ceteris*, whereof the Clerk of register was not keeper. Farther, that the Treasurer and Advocate were only necessary parties to be called to represent the King in his actions ; and that the writ called for being in the Clerk of register's hands, and seen by the Advocate, the Clerk of the register could not of his office refuse to exhibit it, being required by the Advocate. It was *answered*, That the Clerk of register, having his office as free as the Advocate, could not produce the King's evidents unless he had been summoned, or had a particular warrant of the King. In respect whereof, the LORDS found, by two several interlocutors, no process while the Clerk of register was summoned.

In that same cause, the LORDS found, that the Clerk of register might extract any evident being in the King's register, whereof he was keeper, which would make as great faith as the principal, except in cases of improbation : As also, that he might give doubles of any evident of the King's, lying in the register, which had no warrant of registration ; and that the said double being subscribed by the Clerk of register, after this manner, *hæc est vera copia principalis cartæ vel sententiæ litera in registro existen*, made as great faith as the principal, except in improbations ; and therefore found, that a copy of the sentence or testimonial called for, being produced by the pursuer for satisfying the production was sufficient to that effect, and, in respect thereof, found no necessity to summon the Clerk of register. See REGISTRATION.

Fol. Dic. v. 1. p. 139. Haddington, MS. No 2678.

No 80.

In an improbation the Lords found, that services cannot be reduced for not production, where only the par-

1624. February 17. LO. ELPHINSTON *against* E. MARR.

IN an action of improbation, pursued at the instance of the Lord Elphinston against the Earl of Marr, the LORDS found, That services, whereby persons were served heirs to their predecessors in lands, ought not to be decerned to make no faith for non-production, where the party is only called in that process, and neither the director of the Chancellory, who is presumed to have the service, and to