by interlocutor, that the judge might supply the absence of the said person, and put another in his place, and so gave command to do the same, and granted the desire of the bill; *licet nonnulli in contraria*," &c. No. 8.

Fol. Dic. v. 2. p. 370. Colvil MS. p. 359.

1586. *June.* KING'S ADVOCATE *against* MONCUR.

No. 9.

IN an action of reduction of a retour pursued at the instance of the King's advocate, and George Moncur, son to Captain David Moncur, against George Moncur, son to George Moncur, it was found by the Lords, that a party being summoned to pass upon an inquest and service of a brieve, and thereafter disobeying, may be put to the horn at the head burgh of the shire, incontinently, where the service of the brieve is used, notwithstanding of the act of Parliament, and practice daily observed, that a person should be denounced rebel at the head burgh of the shire where he remains.

Fol. Dic. v. 2. p. 370. Colvil MS. p. 407.

1595. *February* 24.
ARCHIBALD OGILVIE *against* BAILIES of DUNDEE.

No. 10.

AN breve beand proclamit to ane certane day, may on na wayis be continewit be the judge to ane uther day, without consent of partie: And gif the judge proceed to the serving thairof, at the day to the quhilk it was continewit by him allanerlie, the service, and all that follows thairupon, is null and of nane avail.

Fol. Dic. v. 2. p. 370. Balfour, (BRIEVES) *p.* 419.

1629. *July* 22. EARL of CASSILLIS *against* EARL of Wigton.

No. 11.
Unnecessary to specify the particular king at whose faith the party died.

Intermediate descents must be particularized.

IN a supplication for assessors to a service of the Earl of Cassillis, the Lords being consulted by the assessors in these points, which were controverted betwixt the parties, they declared and advised as follows: viz. In a general service of the Earl of Cassillis' fore-grand-sir's grand-sir; they found, that the assessors might serve, and the judge also put it to the trial of an inquest, the parties claim bearing, that the predecessor to whom he desired to be served general heir died at the faith of King James III. or of some of his successors, kings reigning for the time; which claim the Lords thought to be relevant, albeit the same bore not *specifice*, in which king's time that predecessor died precisely, which was not proveable *in facto tam antiquo*, neither necessary to be precisely proven, but was enough that it should be

No. 11. tried, that he died at the faith of the king reigning. *Item*, They found, that the party desiring to be served ought to qualify and be special, upon the descent and persons intervening betwixt him and the defunct, to whom he craved to be served; and also, that he ought to instruct and verify the descent, the instruction whereof ought to be made to the assize, and not to the judge, and ought to be produced before the assizers; and also, that the party compearing against the service, ought to see the writs produced, to verify the same, to the effect he may oppone what he may in law, wherefore the same cannot verify the claimer to be heir.

Fol. Dic. v. 2. *p.* 370, 371. *Durie, p.* 466.

*** Auchinleck also reports this case:

IN a service of general heir to one's predecessor, the time of whose death is uncertain, it is sufficient to retour him to have died at the faith and peace of our sovereign lord for the time indefinite.

Questions resolved by the Lords of Session in the service of the Earl of Cassillis, and proponed by the judges and their assessors as general heir to Gilbert Lord Kennedy, his fore-grandfather's grandfather, against which service the Earl of Wigton made opposition. In the said service, it was resolved by the Lords, that the Earl of Cassillis should be special in his claim in reckoning the special descent from the said Gilbert, and verify the same in writ before the judge, and the party who was called for his interest. The Earl of Cassillis contended, that this only should be shown to the assize, and the Lords advised the assessors to cause the Earl condescend upon his claim, and to let the party see the verification in judgement, before the matter should be put to any inquest.

Auchinleck MS. p. 21.

1665. *February* 24.

SIR JAMES MERCER of Aldie *against* WILLIAM ROUAN.

No. 12.
What warrant sufficient.

SIR JAMES MERCER of Aldie, as donatar to the gift of *ultimus hæres*, of umquhile John Rouan, pursues a reduction of the retour and service of William Rouan, served heir to the defunct, as his goodsir's brother's oyé; and having obtained certification *contra non producta*, there being nothing produced but the retour, service, brieve, and executions, but no warrant of the service, either bearing the testimony of witnesses, adduced to prove the propinquity of blood, or bearing, that the inquest of proper knowledge knew the same. The pursuer now insists in his reason of reduction, that the service is without warrant, and without probation by writ or witnesses. It was answered, *non relevat*, as it is libelled, bearing only that it is without probation by writ or witnesses, whereas it might proceed upon the proper knowledge of the inquest, or any two of them. The pursuer answered,