

No 3.

in itself *interesse et dæmnum partis, quia falsitas et dolus non est sine damno*, and so it must follow of necessity, that there is ay some party civilly hurt and prejudged, and interested; for otherways, if it came to the King's Advocate only, he might ay compel all men to produce their writings and evidents, at his instance, and pick at them as he pleased; and also there was alleged a late practise betwixt the Laird of Essilmont, and the L. of Straloch, No 2. p. 7895. into an improbation, in the whilk it was found by the Lords, that the Advocate had no place to improve without the informer.—THE LORDS, after long reasoning, found, by voting, for the most part, that the Advocate ought to have an informer, and to cause him to be notified to the Lords.

*Fol. Dic. v. 1. p. 525. Colvil, MS. p. 331.*

1583. June.

His MAJESTY'S ADVOCATE *against* CHAPMAN.

No 4.

The Lords refused to sustain improbation of a writ, at the instance of the King's Advocate alone, when the parties concerned were agreed about it.

THERE was a contract into the books of Council betwixt two brethren called Chapmans, sons to umquhil ——— Chapman, who was a writer in Edinburgh. The King's Advocate compeared, and desired to be admitted to improve the said contract. It was *alleged*, That, in respect the parties had consented to the registration of the same, and that there was no person hurt by the same, *et dolus non fit sine damno*, nor yet was it a contract *contra bonos mores, aut contra utilitatem regis aut regni*, that the King's Advocate could on no manner of way be heard to improve. It was *answered*, That *crimen falsi fuit actio popularis et de publicis judiciis, et interest reipublicæ ne hujusmodi crimina maneant impunita*; and therefore, albeit the parties would make collusion among themselves, by invention and forging of falsets, yet the King's Advocate ought to be heard ay to improve.—THE LORDS pronounced, by interlocutor, that they would not hear the King's Advocate to improve.

*Fol. Dic. v. 1. p. 525. Colvil, MS. p. 366.*

No 5.

In conformity with the above.

1584. March.

His MAJESTY'S ADVOCATE *against* FORREST.

THERE was one Moncur that had pursued Forrest of F, for the improbation of a letter of tack, and having succumbed in the probation, thereafter the Advocate pursued to hear the same to be improven. It was *alleged*, after that the manner of improbation was given in by the Advocate, that he ought to have no process without an information; for otherways, the King's Advocate, by the privy information of the party, might cause any man to produce his evidents under the pretext of improbation, and then to quarrel and pick at them. It was reasoned on the other part, That the King's interest, and his Advocates, were separated from the other party, *et quod interest reipublicæ et regis ne crimina maneant impunita*, and so the Advocate might both inform and

pursue at his own instance, without the advice and information of a third person.

No 5.

*Fol. Dic. v. 1. p. 525. Colvil, MS. p. 393.*

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CHALMERS *against* DICK.

No 6.

THE King's Advocate may take away writ to improve at his own instance without an informer, for the King's interest is separated from the party's, *nam interest Reipub. et regis, ne crimina maneat impunita*. This was found in an action pursued by James Chalmers against William Dick.

*Fol. Dic. v. 1. p. 526. Spottiswood, (IMPROBATION.) p. 166.*

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1597. February. THIRLESTANE *against* DURHAM.

No 7.

IN an action of reduction and improbation, pursued by the King's Advocate against my Lord Thirlestane for reduction and improbation of his infeftment of the lands of Merkle and Trafrayne, granted by the King to my Lord Chancellor by forfeiture of the Earl Bothwell, or by the said Earl, before his forfeiture, and confirmed by the King, it was *alleged* by Mr James Durham, admitted for his interest to defend, That the said infeftments could not be reduced nor decerned to make no faith for non-production at the Advocate's instance, because the said lands being disposed by his Majesty upon the Earl Bothwell's forfeiture to the Duke and Laird of Buccleugh, his Advocate had no interest to quarrel the said Lord Thirlestane's infeftments, seeing his Highness could report no commodity by the annulling thereof; and so could have no process, unless one of the said parties that was infeft upon the Earl Bothwell's forfeiture, were informers of the advocate. It was *answered* by the advocate, That the reduction and improbation was of infeftments granted originally by the King, and past his Highness' Great Seal, and so his Advocate had interest to pursue without an informer. In respect of which reply, found relevant by the Lords, the exception was repelled.

Found that the King's advocate might pursue improbation of a charter under the great seal, without any informer, although the same lands were disposed under that seal to another.

*Fol. Dic. v. 1. p. 526. Haddington, MS. No 609.*

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1610. June 23. COLT *against* SIMPSON.

No 8.

IMPROBATIONS cannot be pursued by way of action without concurrence of the Advocate.

*Fol. Dic. v. 1. p. 526. Haddington, MS. No 1914.*