

1614. *June 29.* KERR *against* MITCHELHILL.

No 5.

In an improbation at the instance of George Kerr of Sutherlandhall against George Mitchelhill, the LORDS sustained the pursuit at his instance for the production and certification, but they would not give him place to improve, except he were heir.

*Kerse, MS. fol. 205.*

1617. *February* EARL of TULLIBARDINE *against* JAMES DALZIELL.

No 6.

In an action between the Earl of Tullibardine and James Dalziell, the LORDS found, that James Arnot, who proponed an allegiance upon a tack set to the Laird of Clunie, the right whereof pertained to him as assignee to James Dalziell, who was assignee to the Laird of Clunie's escheat, might improve the horning executed at the instance of James Dalziell, upon the which horning, the tack set to Clunie was found null, as being set by the Earl of Athol, who was then rebel, at the instance of the said James Dalziell.

*Kerse, MS. fol. 206.*

1618. *March 19.* A. *against* B.

No 7.

Found, that the heritor of the lands could not be heard to improve a precept granted by his superior, to a person as heir to his father, who had an annualrent forth of the lands, the original charter and sasine being produced with the retour and sasine given to the son; and that because the heritor held the lands of the superior, and not of the King, and so was not superior of the annualrent.

*Kerse, MS. fol. 206.*

1619. *January 29.* SMALL *against* NAPIER.

No 8.

FOUND, that an apparent heir may pursue for improbation of writs or bonds, *ad hunc effectum*, that they may improve; and this sustained against the production *tantum*.

*Kerse, MS. fol. 206.*

1619. *July 7.* LORD OGILVY *against* KINGHORN.

No 9.

In improbations, the LORDS would not sustain a reply in favours of a stranger, that the pursuer had right from him, whose rights made to the defender.

No 9. were called for to be reduced and improved, except it had been libelled and instructed.

*Kerse, MS. fol. 206.*

1620. *January 16.* MONYMUSK *against* PITFODDELS.

No 10.

DECRET of improbation reduced, given against the principal party compearing, at the instance of a party having interest, and knowing thereof; being proven by a decret given at the instance of — Forbes of Monymusk, subvassal to Thomas Menzies *contra* Gilbert Menzies of Pitfoddels, obtainer of the improbation.

*Kerse, MS. fol. 206.*

1620. *December 7.* LA. HUNTLY *against* LO. FORBES.

No 11.

IN improbations, found that a precept of sasine granted by a predecessor, not being of *clare constat*, did not stay certification, because the precept bore in feu-farm, and bore not the duty.

*Kerse, MS. fol. 207.*

1621. *January 31.* Mr JAMES BAILLIE *against* SILVERTONHILL.

No 12.

THE LORDS found no process in improbations, except the advocate be pursuer, albeit the decret obtained at the advocate's instance was craved to be reduced, and that the advocate was defender.

Found by the LORDS, that a decret of improbation, given against a minor of six years not compearing, was reduceable, and that he could not be heard to produce.

In the same cause found, that he should be heard to improve the executions of the summons, albeit the process bore that he compeared and proponed an exception dilator, and thereafter passed from his compearance.

*Kerse, MS. fol. 207.*