

- No 97. 1555, by James, Prior of St Andrews, to them, the LORDS found, they would give certification against the persons summoned, albeit some of the persons to whom the feu was granted were not summoned. *Ratio*, because it divided acres in duty and in clause irritant; but this was well hard for the improbation, for so it could follow, that the evident whilks to be improved, shall be improved for some and not for the hail.

Kerse, MS. fol. 205.

* * Haddington reports the same case :

IN the action pursued by the Duke of Lenox, Lord of the priory of St Andrews, against the Feuers of the acres of St Andrews, for improbation of their infeftments, and reduction of their feus upon clauses irritant, the LORDS found, that they would grant the certification against the parties called for, decerning their general charter granted to the hail number of the feu of their lands to make no faith for not production, notwithstanding that some of the particular feuers were not called; because they would grant the certification, that that charter should make no faith against the parties called and not producing, *in pœnam contumaciæ*, with express declaration, that the certification should not prejudge the parties, who were not called, and so were not contumacious.

Haddington, MS. No 2589.

1619. December 14. EARL OF WINTON *against* The LAIRD OF CORSTORPHINE.

- No 98. FOUND in improbations, that the singular successor may be compelled to produce the evidents made to his author, albeit the apparent heir of the author be not (summoned), where the defender is not able to condescend upon the apparent heir. But this was not found *nisi* where the author is not fully denuded both of property and superiority.—See No 103, p. 6686.

Kerse, MS. fol. 206.

1621. February 20. LO. YESTER *against* LORD BOTHWELL.

- No 99. FOUND that a retour anterior to an infeftment under the Great Seal, granted by King James the First, in anno 1435, produced of the moat of Lochguarret by the Lord Bothwell, which retour was produced by the Lord Yester, of the barony of Lochguarret, bearing David Hay to be served as heir to Thomas Hay his father, in anno 1431, could not be a ground to repel the Lord Bothwell to produce anterior infeftments in the improbation.

Kerse, MS. fol. 208.