

1622. February 26. E. of KINGHORN against L. of INCHSTUIR.

IN an action of improbation pursued by the E. of Kinghorn, as heritably infest in the lands of Inchstuir, against the L. of Inchstuir, for improbation of the evidents made to him, or any of his predecessors, the defender compearing, produced a right anterior to the right which the pursuer produced for his title in that process, and *alleged*, That he could not be compelled to produce any more, seeing thereby he elided the pursuer's right; which being found sufficient by the LORDS;—The pursuer *replied*, That his predecessors, to whom he succeeded, had anterior rights before the defender's right produced, and condescended upon the eldest right, which any of his predecessors had of these lands; which the LORDS sustained by way of reply to be proved, albeit it was not instantly produced; and found, that the pursuer needed not to produce his eldest right instantly, but that it might be instantly proved *cum processu*, and that the defender should not be urged to produce until it were proved; but being proved, they found that the defender should produce all other writs made to his predecessors of these lands, or else a right made to them anterior to that eldest right condescended on, and offered to be proved by the pursuer's reply.

Act. Hope.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 451. Durie, p. 18.

\* \* Haddington reports this case.

IN the improbation pursued mutually by the Earl of Kinghorn and Laird of Inchstuir, it was *alleged* by Inchstuir, That he could not be held to produce any older infestment of his lands held of the King, than the sasine produced by the Earl, pursuer, which was his title libelled, because the defender was infest upon a retour as heir to his father in his lands held of the King, long before the sasine produced. The pursuer *replied*, That his right proceeded from his forebears, who were lawfully infest holden of the King in the days of King Robert the Second; which reply was found relevant, albeit he had not so libelled, and declared that ratification should be granted of all Inchstuir's posterior infestments that should not be produced.

Haddington MS. p. 2607.

1662. December 20.

THOMAS DUNBAR of Muchrome against The VASSALS of the Barony of Muchrome.

THOMAS DUNBAR of Muchrome pursues reduction and improbation against the vassals of the barony of Muchrome, wherein all the terms being run, re-

VOL. XVI.

37 P

No 139.

After the defender has made a production sufficient to exclude the pursuer, the pursuer is at liberty to produce older titles, *cum processu*, upon which he may crave certification, unless again excluded by a new production.

No 140.

It was sustained that the defender had produced