

title nor interest to call for production of the same. All these allegiances were repelled, and the pursuer was found to have good interest by virtue of the said erection and act of Parliament, to call for production of the writs of all the lands and others contained in his said erection, seeing the said posterior act did restore him against all other preceding acts, done in his prejudice; neither was he found to be excluded from this pursuit by the preceding infestments granted to the defenders depending upon the act of annexation, because this case in prelacies and kirk benefices is found by the Lords to differ from cases betwixt laicks, in secular and temporal lands, where usually a right of the defender, before the pursuer's right, excludes the pursuer from seeking of production of any further while that be improven, but in lands belonging to benefices it is not so; where a titular, or prelate, or Lord of erection, who comes in the place of the prelate, is not debarred to seek production of all writs of any thing belonging to his benefice, albeit the party should show a right given to him by another prelate before the provision granted to the pursuer; but here it is to be considered, that this pursuit was for production and improbation, and touched not upon that point, if the said infestments alleged upon by the defenders were sufficient, whereby to bruike the lands or not, or if the pursuer's right was better than their said right, which point was not here drawn in question in this dispute, but reserved to its own time.

No 20.

Act. Stuart & Aiton.

Att. Nicolson & Belshes.

Clerk, Gibson.

Durie, p. 263. and p. 268.

1627. January 31.

LAIRD of Lauriston against His VASSALS.

IN an improbation of the Laird of Lauriston's, it being *alleged*, That there could be no writs produced, made to one Duddingston and Sanderson, because there was none called to represent the said persons; it was found, That there was no necessity thereof *post tanti temporis intervallum*, except the defenders would condescend upon some who might in law succeed unto them; as had been decided before in an improbation of the Earl of Winton's against the Laird of Corstorphin.

No 21.

Spottiswood, (IMPROBATION.) p. 165.

*** Auchinleck reports the same case.

IN an improbation, the heirs, or apparent heirs of such persons whose heirs cannot be known, are not necessarily to be summoned, except the defen-

No 21. ders condescend upon some persons who are known to be heirs, or apparent heirs.

Auchinleck, MS. p. 90.

*** See Durie's report of this case, No 81. p. 2219.

No 22. 1627. February 8. SIR JOHN HAMILTON *against* His VASSALS of Bargeny.

IN improbations, the pursuer being a singular successor, need not produce reversions, where no discharges of reversions are called for.

Auchinleck, MS. p. 90.

*** Kerse reports the same case.

1627. February 8.—IN improbations, found the pursuer has no necessity to produce any reversion, except such as were made to himself, and such as he has; but where discharges of reversions are called for to be produced, in that case, the Lords are in use to ordain the parties to produce *simul et semel*.

Kerse, MS. fol. 207.

No 23. 1627. February 13. LA. BOTHWELL *against* Her VASSALS.

IN Improbations, found not (necessary) to call for writs made to the father or goodsirē, except it were libelled that they were infeft, and the pursuer infeft as heir to them.

Kerse, MS. fol. 208.

*** Although the names are different, this is probably the same case with No 4. p. 25.

No 24. 1627. February 14. EARL of KINGHORN *against* LAIRD of Grange.

IT is sufficient that the pursuer of an improbation libel himself to be heir to his predecessors who were infeft, although he be not infeft himself in the particular lands, whereof he craves the evidents to be produced to hear and see them improven.

Auchinleck, MS. p. 91.

No 25. 1628. January 25. A. *against* B.

IN improbations, found that the production of my author's charter (he being in life,) whereupon he might take sasine, is sufficient to give me interest to call for writs made by my author; and also found, that to prove him author,