

it is not necessary to produce the procuratory and infeftment of resignation ; but it is sufficient, that the charter bear that the pursuer is infeft upon the resignation of his author.

No 25.

Kerse, MS. fol. 208.

1628. January 26. BARON of AUCHYLE *against* M'LEAN.

No 26.

An author
may insist for
improbation of
writs granted
by himself,
whether infeft
or not.

IN an improbation pursued by the Baron of Auchyle against M'Lean, the LORDS found, That the pursuer being infeft in the lands controverted, whereof the evidents were called in question, by right flowing from the bishop of the Isles, who was libelled to be heritably infeft in the same lands, and was author to the pursuer, might call for production and improbation of all writs of the same lands made to the defender by the said bishop of the Isles, albeit the pursuer shewed not where the bishop was infeft himself, seeing he called only for production of writs made to the defender by the bishop's self ; for as the bishop might himself pursue the defender for any writs of the lands made by him to the defender personally, albeit he had never been infeft, so might this pursuer, having right from the bishop, competently seek the same ; for the bishop was in effect common author to them both, and so might seek improbation of the writs made by himself to any of them, as said is. And this was found, albeit that it was *alleged*, That one who was not infeft could not pursue a party for quarrelling of a real right of lands, that pursuit being only competent to them who had a real right themselves, and which might produce the like action.

Act. *Hope and Mowat.*Alt. *Nicolson.*Clerk, *Hay.**Fol. Dic. v. 1. p. 445. Durie, p. 334.*

1628. February 5. E. MARR *against* His VASSALS.

No 27.

IN improbations, found, That the user of an incident must show where he has right from his author, for whose infeftment he calls for incidents ; but that he needs not produce a progress, but only show a right flowing from his immediate author to the lands.

In the same case of improbation, the LORDS sustained this allegiance against the incidents, that none of them could be received to stay the certification, because all the writs were in their own hands ; and it was found, That one might propone this by way of reply without proponing a defence against the incident.

Kerse, MS. fol. 208.