

1629. December 4. JOHN MURRAYHAME *against* ISOBEL ANDERSON.

No 33.

FOUND in improbation, That the improver ought to condescend, if he will improve, *in substantialibus*, or *in data*; and if *in data*, that he cannot improve, except where the date is *in substantialibus*; and also the party heard to declare the witnesses to ilk person's subscribing.

*Kerse, MS. p. 206.*

1630. January 19. LAIRD OF RANKEILLOUR *against* FORD.

No 34.

THE Laird of Rankeillour pursues Ford, and his son and apparent heir, for his interest, for production and improbation of certain writs. During the dependence the father deceases. Rankeillour craves certification against his son, who alledged no process, because his father was dead, and he only called for his interest. To which it was *replied*, That, since the decease of his father, he had compeared for his interest, and had both produced certain writs called for, and had taken days for production of more. THE LORDS ordained the Lord Reporter to grant him a day to produce, and to get the defender's consent thereto, otherways they could hardly get certification against him upon this summons, wherein he was only called for his interest.

*Auchinleck, MS. p. 96.*

1630. February 4. EARL OF KINGHORN *against* STRANG.

No 35.

A general service is a good title in an improbation of a predecessor's deed, which will infer warrandice against the pursuer.

IN an improbation, the LORDS found, that one pursuing for reduction and improbation of evidents of lands made by the pursuer's father, for improbation whereof he pursued as heir to his father, maker of these writs, had good action and interest as heir to pursue the same, albeit he was neither infest himself in these lands as heir, nor yet did libel that his father was infest; for he being heir, and so subject to warrant the deed done by him to whom he was heir, he might seek reduction and improbation; but *hoc titulo*, as heir, if he be not infest, he could not pursue reduction of the writs made by his father of these lands.

And betwixt the same parties an infestment having followed upon a comprising, proceeding upon a sentence of non-entry, obtained at the instance of one who was made assignee to the gift of non-entry by the donatar thereto, this infestment, comprising, and sentence, being desired to be reduced, because the assignation was alleged false and feigned, there having intervened

48 years since the infeftment and comprising foresaid was expired; the LORDS found, after so long a time the party was not holden to produce this assignation, and therefore that the sentence, comprising, and others following thereupon, ought not to be reduced for not production, that writ never being called for, nor quarrelled at any time before, and the comprising thereupon having taken effect, by infeftment and possession continually sinsyne unquarrelled, and the assignation not being a material and fundamental right of the land, and the pursuer having no right from the cedent.—See PRESCRIPTION.

Act. *Advocatus & Nicolson.*

Alt. *Stuart & Aiton.*

Clerk, *Gibson.*

*Fol. Dic. v. I. p. 442. Durie, p. 490.*

\* \* \* Spottiswood reports this case :

IN the action of improbation and reduction, pursued by the Earl of Kinghorn against George Strang, the LORDS found, that none ought to improve an assignation, but only he who succeeds to the cedent, or deriveth right from him.

*Spottiswood, p. 169.*

\* \* \* This case is also reported by Auchinleck.

1630. *February 5.*—IN an action of improbation and reduction, pursued by the Earl of Kinghorn against George Strange, for production of writs made by the Earl's grandsire, to whom he was served heir, and for comprising and assignation made to him, at whose instance the comprising was deduced against the Earl's father, and for writs made by the Earl's goodsire and grandsire; it was *alleged*, Seeing the Earl had not libelled, that he was heir to his father, nor that his father was heir to his goodsire, and so forth; that no writs made by the grandsire, goodsire, or father, could be produced. To which it was *replied*, That the Earl offered him to prove, *cum processu*, that he was heir to his father, and that his father was heir to his goodsire, &c. THE LORDS sustained the summons, by reason of the reply.

*Auchinleck, MS. p. 97.*

1630. *February 19.*

DOUGLAS *against* LAIRD of SWINTON.

ONE Douglas, heir to William Douglas, who was infeft in Coldingham, by John Stewart, and Alexander Cranston of Moreston also infeft, to be holden of the said John, pursuing improbation against the Laird of Swinton, for writs of the lands pertaining to Coldingham, holden of the King, and granted by the King, author to John Stewart; this action was sustained at the instance

No 35.

No 36.