

No 25.

my Lord Maxwell himself, in whose right he succeeded ; who, if he were pursuing these defenders, behoved to show a right.—*Answered*, That he might pursue as heir to his predecessor, and needed not show any other right.—*Duplied*, That was in respect he would be obliged in warrandice of his predecessor's deed, to whom he was heir ; for which cause it was ever sustained that an heir had good interest to improve any deed done by his predecessor, which he would be bound to warrant, albeit he instructed no other interest ; but it was not so in a singular successor, who was not bound in warrandice.—*Triplied*, He needed not instruct that the Lord Maxwell had right, for if the defenders had taken any infeftment of him as having right, they had acknowledged as much. This allegiance was repelled.

6to, He could not seek retours to be improven *principaliter*, but only in *consequentiam*, as to hear and see improven sasines and infeftments, with all that had followed thereupon, whether services or retours ; because, by the acts of Parliament 1494, cap. 57. and 1617, cap. 13. it is ordained that there shall be no process for reducing of retours after three years.—*Replied*, That is only for reducing them for error and inordinate process ; but as for improbation, as false and feigned, it is competent any time, *cum nunquam præscribatur falsum*, except it be enacted otherwise by a statutory law.

*Spottiswood, (IMPROBATION.) p. 166.*

1665. January 20. LITTLE against EARL of NITHSDALE.

No 26.

Certification is not sustained against an apprising, if the infeftment thereon be produced.

LITTLE pursues an improbation and reduction against the Earl of Nithsdale, of the rights of some lands, wherein the LORDS sustained the pursuer's interest on a comprising and charge without infeftment, and though the apprising was on Little's own bond, simulate and assigned to himself ; and found such deeds might make him liable, as behaving as heir, if he intromitted, and were sufficient titles any other way.

THE LORDS also found, That certification ought to be granted against retours and charters, though in public registers, but not against writs registered in the books of Session, the date being condescended on by the defender ; was sustained against all writs granted to the defender and his authors ; but such as seem to represent them are called ; not against writs granted by the pursuer, his predecessors, or authors, but only his predecessors, to whom he doth succeed *jure sanguinis*, and such authors as he produces right from ; but they would not admit certification against apprising, if the infeftment thereupon were produced.

*See IMPROBATION.*

*Fol. Dic. v. 1. p. 355. Stair, v. 1. p. 253.*