

active title, that he had no sufficient interest; producing allenarly the commissary's license to pursue, without a decret dative; for, though he was not obliged to confirm it till he saw if it was recoverable or desperate, yet he ought at least to be de-cerned in executor to Duke William.

I think this inchoat title was not sufficient to sustain his interest; and the offering to produce it *cum processu* should not serve the turn. Hence a compriser, pursuing an improbation of the rights of the lands, shall infest himself after the summons of improbation, (for improbation of the right of lands cannot be pursued but by one that is infest, and so it must be otherwise in improbation of bonds,) it will not accesse, or convalesce, or retrotract; but that summons will be casten. Hence a man pursuing for himself, and as assignee, the summons was casten on informality; because the assignation was found to be subscribed of a date posterior to the date of the summons; for the President called this *filius ante patrem*. It was decided in a case in 1669. Yet see Dury, 20th March, 1623, Heirs-of-line of the Lord Yester *against* the Lord Buccleuch. *Vide infra*, num. 574, § 9. [June, 1677.] See Dury, 4th February, 1630, Earl of Kinghorne. See the case of an inchoat title, and an apparent heir's calling for exhibition of moveable bonds, in the pursuit at the instance of Patrick Fyffe's bairns, mentioned *alibi* in a book containing miscellaneous observes. *Vide infra*, July, 1676, Laird of Drumailzear *against* his brother, the Earl of Twedale, No. 490.

*Advocates' MS. No. 441. folio 231.*

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1674. *February*. ROBERT DOUGLAS, minister of Bothwell, *against* HAMILTON of Parkhead.

MR ROBERT DOUGLAS, minister at Bothwell, charges Hamilton of Parkhead on a bond for 300 merks. Amongst the reasons of suspension this was one, that the extract of the bond produced was not probative, being only registrate in the town-court books of Renfrew, within which town or its jurisdiction he never lived; and though a decret of registration of a bond was a decret of consent, yet if it was given by an incompetent judge it was null. (*Vide infra*, July, 1667, No. 610.)

ANSWERED,—The suspender had renounced the *competentia et exceptio fori*, by agreeing in the clause of registration, that it should be registrate in the books of Council and Session, or any other Judge's competent within the kingdom.

REPLIED,—That still he behoved to be competent.

The Lords passed over the irregularity of the registration.\*

*Advocates' MS. No. 442. folio 231.*

\* But, in form, the least they can ordain is, that the principal bond be produced *cum processu*; which I have seen done.