

1627. July 4.

LESLY against LESLY.

No 70.

IN an improbation betwixt Lesly against Lesly, and Alexander Harvie, spouse to the defender, wherein the defender was convened, for production and improbation of whatsoever bonds, contracts, obligations, charters, or precepts, made by the pursuer, or by that special person to whom he was retoured heir, and to these defenders *nominatim*; the LORDS sustained this action and clause conceived in these general terms; albeit that the pursuer condescended not, neither on the dates of the writs, nor on the tenor nor contents thereof; wherein they found, that he needed not be more special, seeing he pursued by that general clause for writs made by himself, or by that one person allenary to whom he was heir, and not by any other his predecessors, to these same defenders themselves, and not to any of their predecessors, so that they could not pretend ignorance of the writs, if any were made to themselves.

Clerk, Scot.

*Fol. Dic. v. 1. p. 446. Duris, p. 304.*

1630. March 5.

EARL OF WIGTON against EARL OF GASSILLIS.

No 71.

A GENERAL clause, to this effect, was sustained, 'craving production of whatever decrees obtained by any of the defenders predecessors which might affect the lands and establish any right thereto in any other person,' although it neither bore the name of the party obtainer of the sentence, nor against whom, before what judge, or for what cause the decreets were.

*Fol. Dic. v. 1. p. 446. Duris.*

\* \* \* This case is No 38. p. 6633.

1675. December 8.

LORD ARMISTON against MURRAY.

No 72.

IN a reduction and improbation at the instance of an heritor of land, against the heritor of a mill, to which mill his lands were pretended to be astricted; the LORDS refused to sustain this general conclusion, that the defender should produce all writs which might import thirlage, in respect there might be writs importing thirlage consequentially, of which the defender was not obliged to know what the import might be; and it were hard that upon pretence of such an interest, the defender should make his charter chest patent to the pursuer; and the pursuer had a remedy if he apprehended that the defender might trouble him upon the pretence of writs which might consequen-

No 72. tially import thirlage, viz. he might force him to produce the same by intending a negatory action and declarator of freedom.

*Fol. Dic. v. 1. p. 446. Stair. Dirleton. Gosford.*

\*\*\* This case is No 53. p. 6645.

1677. January 31.

GARDEN against PEARSON.

No 73.

In an improbation all bonds were called for, granted by the pursuer in favour of the defender, or to which he had right by assignation. Certification sustained, though both general, and in absence. Improbation is a general remedy to secure against any right, real or personal.

GARDEN having assignation to a bond granted by umquhile Balmadies in anno 1635, he obtained decret against this Balmadies in the court of Rosecobie. Balmadies suspends on this reason, that his father had long ago obtained a certification in an improbation against Mr Archibald Pearson, and against Lanton, Mr Archibald's good-father, who had meddled with his writs, and taken away blank papers subscribed by him, as also discharges of this and other bonds; therefore, for securing himself against both, he had no other remeid but by improbation, to force them to produce any bonds wherewith they could pretend to charge him, that he might clear the same in his own time. In which improbation, he called for some writs in particular; and in general, all bonds conceived in favours of either of them, or whereunto they had right by assignation; and did thereupon extract a decret of certification; after which, neither of them ever insisted till Balmadies was dead, and the prescription near run. The charger *answered*, *1mo*, That such general certifications can have no effect; *2do*, It was in absence; *3tio*, It is a legal advantage, and is taken off by another legal advantage, viz. The decret charged on, wherein the suspender compeared, proponed a defence of payment, and made litiscontestation; and therefore, this allegiance upon the certification is competent and omitted. It was *replied*, That competent and omitted in decreets of inferior courts is never sustained, but where it appears to be *dolose* omitted, and *animo protelandi litem*, as in the case of payment, compensation, or the like. But procurators of inferior courts understand not certifications, nor the effect thereof; neither did Balmadies himself, though he hath the privilege of an advocate, being without practice.

THE LORDS found the certification, albeit general, valid against this bond, being then assigned to the charger, whether he compeared or not, improbation being a general remeid to secure all the lieges against any right, real or personal, that might be pretended against them; and found competent and omitted in an inferior court, in matters not ordinarily understood there, not relevant. See PROCESS.

*Fol. Dic. v. 1. p. 446. Stair, v. 2. p. 501.*