

1682. *February.* Mr GEORGE ROME *against* PEPPERMILN.

No 57.

THE active title in an improbation being an infeftment in the year 1621, and the defender, to satisfy the production, having produced a charter and sasine in anno 1622, relative to an apprising before the year 1621, by virtue whereof they had been in possession of the lands from the year 1646,

THE LORDS granted certification unless the apprising were also produced, viz. the decret of apprising with the grounds and warrants, (but not the executions after so long a time) seeing the defender could not allege 40 years possession by virtue of that infeftment. Here the defender did not offer to prove the tenor of the apprising, or to debate on his production as sufficient.

*Harcarse, (IMPROBATION AND REDUCTION.) No 527. p. 146.*

1682. *March.* MARQUIS of ATHOLE *against* The EARL of BREADALBANE.

No 58.

In an improbation of the rights of the vassals of the lordship of Kinclavin, at the instance of the Marquis of Athole, as constable of the castle of Kinclavin, and the King's Advocate concurring for his Majesty's interest, as superior of the lordship,

It was *alleged* for the Lord Breadalbane; That the charter produced not containing his lands *per expressum*, he was not obliged to take a term, till the pursuer proved that his lands were part and pertinent of the lordship of Kinclavin.

*Answered*; The defender cannot contravert the King's right as superior, for whom his Majesty's Advocate concurs in the process.

*Replied*; The King does not pursue as superior paramount, but only calls for the evidents of the lordship of Kinclavin, of which the defender knows not his lands to be a part, till it be proved; nor is he obliged to disclaim, seeing baronies are sometimes dismembered from a lordship whereof they were original parts.

"THE LORDS ordained the defender to take a term to produce, and the pursuer to prove part and pertinent at the same term."

*Harcarse, (IMPROBATION AND REDUCTION.) No 800. p. 146.*

1684. *February.* Mr CHARLES HUME *against* The EARL of HUME'S VASSALS.

No 59.

IN a reduction and improbation at the instance of the Earl of Hume, as infeft on an adjudication of the estate of Hume, the pursuer being debarred by horning *ab agendo*, there was afterwards compearance for Mr Charles Hume, who had adjudged the Earl's right, and consequently the dependence; and craved to be allowed to insist in his own name, as legal assignee by the adjudical

Found that an adjudger who was neither infeft, nor had charged the superior, could not insist in an improbation.