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sor may either insist in his own name, or his author's name, or in both, as he thinks fit ; and the horning against Sir Alexander cannot sist process in this case, because albeit Sir Alexander be only infest, and that Sir Patrick's right from him is not yet complete by infestment, yet the action being raised not only in Sir Alexander's name, but likewise in Sir Patrick's, from the beginning, and the terms being run, and certification granted, only the extract of the certification was superseded for some time, yet process cannot now be sisted by horning against Sir Alexander ; and the practick betwixt the Earl of Home and his Vassals doth not meet this case, because in that case the process was not intended from the beginning, in Mr Charles, his brother's name, nor were there terms taken, nor certification granted ; but when the Earl was insisting in the action, the vassals having debarred him with horning, and Mr Charles having compeared for his interest, and craved that process might be carried on in his name, by virtue of an adjudication that he had led against the Earl, the LORDS refused to allow the process to be carried on at his instance, not only because he was not infest upon the adjudication, but in respect the process was not raised in his name from the beginning. THE LORDS repelled the defence proponed against the pursuer's interest, in respect the process was sustained *ab initio* at his instance, and that all the terms were run ; and found the other defence proponed against the validity of the pursuer's title, and that Sir Alexander, his author was not validly infest, nor competent *hoc loco*, reserving the same to be prompquent, after the production shall be satisfied, and the reasons come to be debated.

Sir Pat. Home, MS. v. 2. No 624.

1686. February. DUKE of GORDON against His VASSALS.

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A pursuer's title having been only a sasine, the charter was ordered to be produced.

IN a reduction at the instance of the Duke of Gordon against his vassals,

It was *alleged* for the defenders ; No process, in respect the pursuer's title produced is but a sasine without a charter.

THE LORDS ordained the charter to be produced, and sisted process till that was produced.

It was thereafter *alleged* for the defenders, That the sasine being but an extract, and there being no precept of sasine in the charter, the precept ought to be produced ; *2do*, One of the defenders is minor, and *non tenetur placitare* ; *3tio*, The executions of the summons bear not the name of the dwelling-houses, where the defenders were cited ; *4to*, The executions are not stamped ; *5to*, The executions against the tutors and curators at the market-cross does not bear that a copy was left.

Answered ; The extract of the sasine is sufficient, and the precept needs not to be produced ; *2do*, *Minor non tenetur placitare* takes no place against the taking of terms in improbations ; besides, there was improbation upon the same

grounds commenced against the minor's father in his own lifetime, so as the father had occasion to consider and consult his defences, and therefore the privileges ought not to be sustained in this case; *3^{to}*, The acts of parliament require not the dwelling-house to be named, although in hornings practice requires it, because of the great prejudice that may follow upon these, and for that charges of horning may be private; for improbations are publicly called from the bench; and it is only the first execution that is here quarrelled, for the second execution bears 'personally apprehended;' *4^{to}*, The vestige of stamping appears, and the execution is old; *5^{to}*, Executions against tutors and curators need not bear the leaving of a copy, and yet, *de facto*, copies were left; nor is there place for this objection, seeing there is compearance for the defenders and their curators.

THE LORDS repelled the allegiances in respect of the answers.

Harcarse, (IMPROBATION AND REDUCTION.) No 566. p. 157.

1688. February 16. ROGER HOPKINS *against* The DUKE of GORDON.

A RIGHT of some teinds and patronages being disposed for L. 300 Sterling, with an express provision, That, in case of not-payment of the money at a precise day condescended on, the disposition and assignation should be null and void; and the assignee having transferred his right to the Duke of Gordon, who infest himself thereon, the disponent commenced reduction and improbation of the assignation, and all that followed thereon, upon the irritancy above-mentioned.

Alleged for the defender, That the pursuer's title being a personal clause in the disposition, it was not sufficient to reduce infestments and real rights.

Answered; The irritant clause being *in gremio* of the defender's author's right, he could not be ignorant of it; and it is sufficient to reduce the disposition and infestment to himself *in consequentiam*.

THE LORDS sustained the pursuer's title and reduced.

Harcarse, (IMPROBATION AND REDUCTION.) No 576. p. 160.

1709. December 16.

FARQUHARSON of Innercauld *against* EARL of ABOYNE.

FARQUHARSON of Innercauld pursues a reduction and improbation against the Earl of Aboyne, of his right to the lands of Grodies, and calls for production of all writs in his person concerning these lands. *Alleged*, I'll take a term for no right, except those from whom you derive right and connect a progress; for *quo jure* can you compel me to produce rights flowing from persons whom you neither represent, nor shew any right derived from them. *Answered*, This doc-

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A pursuer of an improbation can reduce no rights but those flowing from his authors, with whom he is connected by progress.