

No 73. hazard, and that law and reason were stronger in that case against them than in certification of old evidents of lands which are parts and pertinents.

Gosford, MS. No 951. p. 629.

No 74.

1687. *November.* EARL OF AIRLY *against* LAIRD OF PITLIVER.

IN a reduction and improbation at the instance of the Earl of Airly against Pitliver;

The defender *alleged*, No process, because the pursuer's active title of infeftment was expedite after executing of the summons.

Answered, The infeftment proceeds upon a retour, which is always drawn back to the time of the predecessor's decease.

Replied, That is sustained in removings, which are possessory actions, but never in actions petitory.

THE LORDS sustained the allegiance and reply, and found no process.

In this process they found also, That the persons by and to whom the writs called for were first granted, should be condescended on in the libel; that authors and representatives may be called; and that it was not enough to libel in general, that these were granted by some of the pursuer's predecessors to some of the defender's predecessors and authors.

Fol. Dic. v. 1. p. 446. Harcarse, (IMPROBATION AND REDUCTION.) No 573. p. 159.

1698. *January 19.*

KING'S ADVOCATE and his FACTOR *against* MARQUIS OF MONTROSE.

No 75.

Found, that, in an improbation, the defender was not obliged to produce any writs, but such as were specially called for, and that whether the King or a subject were pursuer. Found, that no certification could pass on a general libel of all writs.

HIS MAJESTY having granted a gift of L. 4000 Sterling, out of the bishop's teinds, where the tacks are expired, and out of their vassals entries, now in the King's hands, by the abolition of episcopacy, to Mr Johnston, late secretary, there is a reduction and improbation raised by his Majesty's Advocate, and Harry Douglas, his factor, against many persons, where the bishops were either superior of the lands, or titular of the teinds; and amongst the rest, the Marquis of Montrose being called, it was *alleged* for him, that being minor, he cannot be obliged to produce any writs but those which are specially called for, and no certification can pass on the general clause of the libel in improbations of all other writs; and it was so found in a late case betwixt himself and Lennox of Branshogle, and likewise in Dalzell of Glennan's case.* *Answered*, Whatever may hold among subjects who are obliged to know what they call for, this cannot militate against the King, who cannot so easily condescend. THE LORDS found there was no disparity, and sustained the Marquis's defence. In this process, there were two particulars noticed, but not debated. The *first* was, that it is of

* Examine General List of Names.

dangerous consequence to allow such improbations at the King's instance, for he may at that rate force the production of all his vassal's charter chests. *2do*, That this action had not the privilege of the King's causes (there being a donatar) and yet it was assumed.

No 75.

Fol. Dic. v. 1. p. 446. Fountainhall, v. 1. p. 814.

SECT. III.

Certification, its Nature, Stile, and Effects.

1671. *January 10.* JOHNSTON *against* LAIRD of CASTLEMILK.

No 76.

IN an action of improbation pursued by Mr John Johnston against the Laird of Castlemilk, the LORDS, after production of incident diligence by the defender, granted certification for the rest of the writs not contained in the incident.

January 22.—IN the same cause, the said Mr John offered to improve the execution of the incident, both *cum processu*; which having past to interlocutor, the LORDS found, that if Mr John proponed improbation by way of exception, he behoved to confess the whole libel, otherwise they would reserve him his improbation by way of action.

Kerse, MS. fol. 204.

. Haddington reports the same case.

MR JOHN JOHNSTON pursued the Lairds of Castlemilk, elder and younger, for improbation of their evidents of Castlemilk, made to them and their predecessors, by his Majesty, or by his Majesty's mother, or by King James the Fifth, King James the Fourth, or by the Duke of Lennox, or his father or mother, Earl of Lennox, or John Earl of Lennox. In the which cause, the defenders raised an incident against my Lords of Blantyre, Kilsyth, and diverse others, for certain evidents of the said lands, made to the defenders and their predecessors, by the Earls of Lennox. The pursuer urged certification for the rest of the writs called for, and neither contained in the incident, nor produced. It was *answered*, That until the incident were discussed, the production could not be concluded, and before that time, he would satisfy the production for the rest, or suffer the certification then to pass. THE LORDS