

1622. February 1. LAIRD of Craigie against His VASSALS.

IN an action of improbation pursued by the Laird of Craigie Wallace against his Vassals, the LORDS found, That where the pursuer of such action calls for the evidents made by his authors and predecessors, particularly condescended upon in the summons, that the pursuer must prove that these persons his authors, if they be strangers to him, were infest themselves in these lands, for the evidents whereof, the defenders are convened, and also that the pursuer had right proceeding by a lawful progress from these authors, who were first infest; and if the pursuer's predecessors be such persons to whom he may succeed in blood *in linea rentâ*, that likewise he must prove that he is lawfully served heir by progress to all these predecessors, whose deeds done by them are called for by that improbation, without which the LORDS found the action could not be sustained.

Act. Hope.

Alt. Nicolson & Cunningham.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 443. Durie, p. 13.*

\* \* \* Kerse reports the same case :

IN improbations the LORDS found now that the pursuer had no interest to call for writs made by his father, goodsir, grandsir, &c. except that either he prove that he is heir to them, or that they were infest in the lands, that he succeeds to them. But this was in respect of the interruption; for Craigie had right from Carnell, who was a stranger; but where there is an interruption, the LORDS sustained.

*Kerse, MS. fol. 207.*

1622. December 20. LO. CATHCART against His VASSALS.

IN improbations, no process sustained at the instance of the Lo. Cathcart, for production of writs made by his father, because he libelled infest as heir to his goodsir, and libelled not that his father was infest, or that he was heir to his father.

In the same case the LORDS found, that the discharges of reversions being called for, the Lo. Cathcart behoved also to produce all his reversions *simul et semel*, and found it not sufficient to condescend upon the maker and receiver, date and sum.

*Fol. Dic. v. 1. p. 443. Kerse, MS. fol. 207.*

No 13.

In an action of improbation against vassals, in which writs were called for, granted by the pursuer's predecessor, the Lords found the action could not be sustained, unless the pursuer could make out, that he had been served heir by progress, to every predecessor whose writs were called for; and it was incumbent on the pursuer to produce his author's infestments, and a progress to them.

No 14.

\* \* \* This case is also reported by Haddington :

No 14.

LORD CATHCART pursued an improbation against a number of his vassals. They *alleged* they could not be compelled to produce to him any evidents of the lands libelled, made to them by the Master of Cathcart, his father, because he was not heir to him.—It was *answered*, That he being infest by his goodsir, or as heir to his goodsir, would have action of improbation for evidents of the lands libelled, made by his goodsir, fore grandsir, or any other of their predecessors, to whom they might succeed *jure sanguinis*, albeit the pursuer was not heir to his ancient and remote predecessors.—THE LORDS found, That albeit the pursuer would be admitted to pursue for evidents alleged made by his ancient predecessors; yet his interest produced proceeding from his goodsir, excluded him from all pretence that his father was infest in the lands; and so he being his immediate predecessor in blood, he could have no action to improve evidents made by him, unless he were served to him, or infest by him. It was also found, that the pursuer could have no action for production of discharges of reversions, unless he, *simul et semel*, produced his reversions, and would not allow his con-descending upon the name of the granter, receiver, sums, lands, and date; but would have the reversions themselves produced. They sustained the summons for heritable bonds and decreets arbitral concerning the lands libelled, and would not grant incident to the defender for the decreets arbitral pronounced in their favour. They would not grant incident against parties called in the incident as havers, they being only named Wm Campbell in —, and John Mitchell in —; nor would not suffer them now to design them, after the production of the incident. They sustained an incident for Campbell of Kenynecleuch, albeit not authorised by curators; because they thought it equitable not to suffer his evidents to be decerned to make no faith for not production, and only ordained him to provide himself of a curator *ad lites* against next term.

Haddington, MS. No 2714.

No 15.

A retour found a sufficient title, though without a sasine, to insist in an improbation of certain rights, affecting the lands to which the pursuer was retoured, he producing his predecessor's sasine.

1623. March 20. LO. YESTER'S HEIRS *against* E. of BUCCLEUGH.

IN an action of improbation pursued at the instance of the heirs of line of umquhile Lord Yester, against the E. of Buccleugh, for improving certain evidents of lands, to the which the pursuers were retoured heirs to their predecessors, the LORDS sustained the pursuers interest and action, by production of their retour, albeit they had not been seased in the lands; which retour was found a title, whereby they might pursue improbation *per se*; for in this process the pursuers produced a sasine, but it being of a date posterior to the principal summons, the LORDS found it could not be the title of that pursuit, and therefore sustained the retour for a title; the pursuers therewith producing a sasine of their predecessors of these lands, to whom they were retoured therein.