

\* \* \* 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 predecessors' 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.

*March 26.*—IN an improbation at the instance of Lo. Yester's Heirs, against the Lo. Buccleugh, the LORDS found, That the pursuers had no interest to call the defender, for production of any writs made to him by the King, except the pursuers libelled and qualified that their right to the controverted lands flowed from the King; and found it not enough that the pursuers, being heritably interest in the lands, had therefore interest to call for production and improbation of any writs which the defender had thereof, made to him by any other person whatsoever.

Act. *Nicolson & Stuart.*Alt. *Scot.*Clerk. *Hay.**Fol. Dic. v. 1. p. 442. Durie, p. 59. & 63.*

No 15.

1624. *February 5.* BARON of Broughton against TOWN of CANONGATE.

IN an action pursued at the instance of the Baron of Broughton against the Town of Canongate, for production and improbation of an evident made to them of the freedom of burgh, by the particular Abbots of Holyroodhouse, enumerated especially in the summons, wherein was also contained a general clause, whereby they were called to produce all writs thereof, made to them by whatsoever Abbot of Holyroodhouse; which general clause being quarrelled by the defenders as irrelevant, and which ought not to be sustained, except the pursuer would condescend specially upon the name of the Abbot, maker of the evident, whereof the production was craved. This allegiance was repelled, and the LORDS sustained the general clause, and found it not necessary to compel the pursuer to condescend specially upon the name of the Abbot; and declared, that in all actions of the like nature, viz. in improbations of writs made by Abbots, Bishops, or other the like churchmen, it should be sufficient to the pursuers, in these cases, to call for production and improbation of writs made by whatsoever churchmen titulars, and provided to that benefice of that subject which was controverted, and that there should be no necessity to set down in the principal summons the names of the churchmen specially, but that the general clause should suffice, bearing all writs made by whatsoever titular of the benefice, viz. by whatsoever Abbot or Bishop of that Abbacy or Bishoprick, to be false, &c.

Act. *Nicolson elder & Aiton.*Alt. *Lermonth & Oliphant.*Clerk, *Scot.**Fol. Dic. v. 1. p. 444. Durie, p. 106.*

No 16.

Where the rights called for have proceeded from churchmen, it is not necessary to libel particularly the name of each bishop, abbot, &c. whose deeds are to be im-

\* \* \* Spottiswood reports the same case :

IN an action of improbation and reduction intended by the Laird of Broughton against the Canongate, the summons bore to produce all writs and evidents granted to them by John Lord Holyroodhouse, last Abbot thereof, or by um-