

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. Lermont & 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-

No 16.

quhile A. B. his predecessor, or by umquhile C. D. his predecessor, and so furth enumerating four or five successive, or by any Abbot of Holyroodhouse whatsoever before them.—It was *alleged* by the defenders, That certification could not be granted on the general clause, but only for such writs as had proceeded from the particular Abbots whose names were libelled.—THE LORDS sustained the general, in respect that they were churchmen, and so of another condition than seculars.

The like was found between the Bishop of Dunkeld and his Vassals, 23^d February 1627.

Spottiswood, (IMPROBATION.) p. 164.

* * * Kerse also reports this case :

THE LORDS sustained the general clause of Bishops and Abbots, and their predecessors, without designing of their names and surnames, in an improbation pursued by the Laird of Broughton against Town of Canongate.

Kerse, MS. fol. 206.

* * * The same case is mentioned by Haddington :

IN the improbation pursued by Sir William Ballenden against the Town of Canongate, albeit certification was granted against all writs not produced, and the 20th of March only granted for a charter, which the defenders had probable cause to seek ; yet the LORDS, in reasoning amongst themselves, found, that in improbations, the custom was to receive any writs recovered by the defenders before extracting of the act. In that same cause the LORDS found, that Sir William Ballenden had just cause to urge production of feus, tacks, and evidents, granted to the defenders by any Abbot of Holyroodhouse, albeit the Abbot's name was not expressed in the summons, but only the general clause, by whatsoever Abbot.

Haddington, MS. No 2991.

No 17.

1624. February 18. LORD ELPHINSTON *against* The EARL of MARR.

IN the improbation pursued by my Lord Elphinston against the Earl of Marr, *alleged*, The pursuer could not call for improbation of infeftments granted to the Earl of Marr defender, or to his father, because the said infeftments are long posterior to the pursuer's own rights and infeftments, and so cannot prejudice him ; and nothing can come under the compass of improbation but that which may prejudice a party.—*Replied*, He may remove all titles of falsehood, and may improve any evidents whatsoever that may affect his lands.—THE LORDS repelled this exception.

Spottiswood, (IMPROBATION.) p. 167.