

No 28.

1628. June 27.

MR ROBERT BRUCE *against* PATRICK BRUCE and Others.

If a party pursuer of an improbation call for production of writs made by the pursuer's author, to whom he is only singular successor, to the defender or his predecessors, he must produce the same author's right to the land; and it is not sufficient to allege, that the pursuer's infeftment depends upon the said author's reservation, but the said author's right must be produced.

*Auchinleck, MS. p. 93.*

\* \* \* Kerse reports the same case.

IN improbations, found, That Mr Robert Bruce might improve an assignation or nomination to a tack made by Captain Andrew Bruce to his sons, albeit Captain Andrew was not Mr Robert's author, *cum potestate assignandi*. And in this same cause found, that Mr Robert behaved to produce his author's right.

*Kerse, MS. fol. 208.*

No 29.

1629. February 7. EARL OF MARR *against* LEITH of Harthill.

IN an action of improbation, if certification be granted with this condition, that the same shall not be extracted till a certain day; and in the mean time, all writs that shall be produced before the extracting of the certification shall be received betwixt the granting of the certification and the time appointed for extracting the same; the defender departs this life; notwithstanding the pursuer craved to have his certification extracted, which was decerned before his decease; the LORDS refused to give out certification against the defunct.

*February 17.*—In the same action, it was contended, that the certification foresaid, granted before the father's decease, and continued to be unextracted till a certain day, should be granted against his son, who was fiar of the lands, whereof the writs were called to be produced, seeing he was called in the said summons of improbation. THE LORDS would not sustain the certification granted against the father to be against the son for any writs for which the father was called.

*Auchinleck, MS. p. 95.*