1628. *February* 29. NITHSDALE *against* WESTRAW.

No 113.

CERTIFICATION was granted against retours although they may be had in the Chancery which is a public register, because certification can be granted against any infeftment, if not produced, although it may be had in the register of the director of the Chancery, much more against retours.

Certification was refused to be granted against retours or services before the year 1544, (at which time the registers were burnt by the English), *i. e.* all retours and services which the defender will make faith, are not in his own hands.

Fol. Dic. v. 1. *p.* 447. *Durie. Spottiswood.*

*** This case is No 25. p. 5192.

*** The same case is mentioned by Kerse:

IN improbations no production of retours before the year of God 1550, except they granted the holding of them. *Item*, found that the act of prescription by retours after three years is not extended to improbations.

Kerse, MS. fol. 208.

1628. *July* 18. MARK KER *against* SCOTT of HARTWOODMIRES.

No 114.

IF a writ registered in the books of Council and Session, be called for to be improven, if the same has been registered after the intenting of the cause, the defender must travel with the clerks to produce the principal, and the pursuer must seek it from the clerk to produce, in case it has been registered before the intenting of the cause.

Fol. Dic. v. 1. *p.* 448. *Auchinleck, MS. p.* 94.

1632. *March* 21. ERSKINE *against* RENTON.

No 115.

THE Laird of Wedderburn, the Lord Erskine and others, pursued an improbation of an inhibition raised by the Laird of Renton against Sir George Home of Manderston. The defender having produced the extract of the inhibition with the principal executions, the pursuer *alleged*, the extract could not satisfy the production in respect of the act of Parliament 1581, cap. 119. Yet the LORDS sustained it, as they had done before between Sir James Dundas and Symington of Howburn.

Fol. Dic. v. 1. *p.* 448. *Spottiswood*, (IMPROBATION.) *p.* 169.

No 115.

*** Kerse reports this case:

Found that the double of an inhibition satisfies the production in an improbation, notwithstanding of the act of Parliament 1581, which requires the principal to be produced.

This same found betwixt James Dundas and Howburn.

Kerse, MS. fol. 206.

No 116.

Charters under the Great Seal, retours, &c. being called for, it was found not sufficient to bar certification, that the defender offered to condescend that they were in *publica custodia.*

1633. *March* 20. The King *against* E. of Strathern.

The King's Majesty pursuing the Earl of Strathern, for production and improbation of all writs and charters under the Great Seal, and retours of any of his predecessors, of and concerning the Earldom of Strathern; the Lords found, in the consideration of these writs called for to be produced, that, albeit charters under the Great Seal might be extant in the King's public register, and that retours might be extant at the Chancellary, whereby it might be doubted, if they ought to be decerned to make no faith for not production, before the said registers were sought by the parties, pursuing such causes, and that it were made known to the Lords, if any such writs were extant or not, by the Officers intrusted with the custody of the registers, rolls, and Director of the Chancellary, for, if they were extant, it might be thought, that the pursuer should produce them, and that they could not be taken away for not production, as said is, albeit the defenders called were absent, or did compear, and not produce them; even as writs registered in the books of Session, will not be decerned to make no faith, for not production, nor reduced, albeit the defender produce them not; the Lords found, that the pursuers of such causes, either of improbation, or of actions of reduction, are not holden to search the registers, nor Chancellary, for such writs, viz. charters or retours, nor to extract, or produce them, albeit they were extant there; but if parties, defenders called to that effect, did not satisfy the production thereof themselves, that the certification of the summons should and ought to pass against them. And this case of evidents differs from cases of decreets of Session, or writs registered in the books of Session, which are known thereby, to have passed *in rem judicatam*, whereby that which is decerned by the Judge cannot be taken away for not production, seeing their clerks ought to be answerable therefor, and to extract the same, or to exhibit the warrant registered; whereas, the other foresaid charters and retours are original securities, properly concerning the parties, wherein no other person has interest; and in this case of the King's, this was the rather found, because the Earl compeared, and did not allege this.

Act *Advocatus Regis.* Alt. *Mowat, Primrose,* & *Neilson.* Clerk, *Hay.*