

1624. February 17. ELPHINSTON against MARR.

No 100.

IN my Lord Elphinston's improbation against the Earl of Marr, it was found that in calling for retours and services, the director of Chancery or the clerk to the process of the services should have been summoned;

*Spottiswood, (IMPROBATION.) p. 165.*

\* \* \* See Haddington and Durie's report of this case, *voce* CITATION, No 79. p. 2217. and No 80. p. 2218.

1626. June 29. Lo: KILDRUMMY against ———.

No 101.

IN an action of reduction and improbation pursued in summons, as usually is done, at the Lord Kildrummy's instance against ———, the defender compearing, produced the writs called for, and declared that he produced the same, for satisfying of the summons and action so far as concerns the improbation, but not for the reduction; seeing he declared that he would not compear concerning the reduction, but be absent, so that a certification in absence might be granted upon the reduction, decerning the writs to be reduced for not production; and which he alleged he might conveniently do, seeing the reduction and improbation were two distinct actions, it would have been then in his liberty to be absent in any of them, or to compear in any of them, as he pleased; so that the pursuing of the same in one summons, could not alter the nature of the actions, but the same remained in themselves two distinct actions, albeit both libelled in one paper, and could not thereby force the defender to any other compearance, than if they were severally pursued; this was not permitted by the Lords, but they found, that either he should compear and satisfy the production in the whole cause, as well for the reduction as for the improbation, or else that he should be absent *in toto*; and would not suffer him to divide his compearance and production, so that he should be absent, and not produce, and in that same process to compear and produce.

Found in conformity with Wardlaw against Curriehill, No 92. p. 6680.

Act. Hope.

Alt. Nicolson.

Clerk, Hay.

*Fol. Dic. v. 1. p. 452. Durie, p. 205.*

1627. February 24. KILBIRNIE against GLENGARNOCK.

No 102.

IN improbations and reductions, the defenders may reason upon the pursuer's interest after the production be satisfied.

*Auchinleck, MS. p. 91.*