

No 73. hazard, and that law and reason were stronger in that case against them than in certification of old evidents of lands which are parts and pertinents.

Gosford, MS. No 951. p. 629.

No 74.

1687. *November.* EARL OF AIRLY *against* LAIRD OF PITLIVER.

IN a reduction and improbation at the instance of the Earl of Airly against Pitliver;

The defender *alleged*, No process, because the pursuer's active title of infeftment was expedite after executing of the summons.

Answered, The infeftment proceeds upon a retour, which is always drawn back to the time of the predecessor's decease.

Replied, That is sustained in removings, which are possessory actions, but never in actions petitory.

THE LORDS sustained the allegiance and reply, and found no process.

In this process they found also, That the persons by and to whom the writs called for were first granted, should be condescended on in the libel; that authors and representatives may be called; and that it was not enough to libel in general, that these were granted by some of the pursuer's predecessors to some of the defender's predecessors and authors.

Fol. Dic. v. 1. p. 446. Harcarse, (IMPROBATION AND REDUCTION.) No 573. p. 159.

1698. *January 19.*

KING'S ADVOCATE and his FACTOR *against* MARQUIS OF MONTROSE.

No 75.

Found, that, in an improbation, the defender was not obliged to produce any writs, but such as were specially called for, and that whether the King or a subject were pursuer. Found, that no certification could pass on a general libel of all writs.

HIS MAJESTY having granted a gift of L. 4000 Sterling, out of the bishop's teinds, where the tacks are expired, and out of their vassals entries, now in the King's hands, by the abolition of episcopacy, to Mr Johnston, late secretary, there is a reduction and improbation raised by his Majesty's Advocate, and Harry Douglas, his factor, against many persons, where the bishops were either superior of the lands, or titular of the teinds; and amongst the rest, the Marquis of Montrose being called, it was *alleged* for him, that being minor, he cannot be obliged to produce any writs but those which are specially called for, and no certification can pass on the general clause of the libel in improbations of all other writs; and it was so found in a late case betwixt himself and Lennox of Branshogle, and likewise in Dalzell of Glennan's case.* *Answered*, Whatever may hold among subjects who are obliged to know what they call for, this cannot militate against the King, who cannot so easily condescend. THE LORDS found there was no disparity, and sustained the Marquis's defence. In this process, there were two particulars noticed, but not debated. The *first* was, that it is of

* Examine General List of Names.