

## IMPROBATION.

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### No. 1. 1735, Jan. 16. RANKINE *against* CRAWFURD.

IN respect of the long taciturnity since the certification, and that the means of improving are now perished, the Lords repelled the objection to the decret of certification. I mentioned a precedent to the same purpose December 1610, L. of Urie against Gordon.

### No. 2. 1741, June 9. ABERCROMBIE of Tulliebodie *against* CUMMING.

THE question was, Whether a defender in an improbation who alleged he had possessed upon charter and sasine for the years of the positive prescription could be allowed to prove his possession before taking terms, and the production closed, since he produces instantly a pretty probable evidence of possession by tacks? and the Lords allowed the same term to prove 40 years possession that the defender takes to satisfy production.

### No. 3. 1743, Dec. 7. ROBERTSON *against* JOHN ALLASON.

IT appeared to us that in this case there was either a plain forgery or a gross fraud on the pursuer Robertson the creditor in this bill, accepted by the three Allasons, or both. The Lords allowed Robertson the pursuer to abide by the bill under protest, that the same was delivered to him signed by all the three brothers Allasons, and that upon the faith thereof he lent the money to Robert Allason.

\* \* The case Connel against Orr 16th June 1747 is referred to, as decided in the same way. That case is thus mentioned in the Notes.

ORR accepted a bill to Connel and Watson partners for 20 guineas, but the acceptance not signed by them, and the bill was written by Watson and remained in his hands. Connel afterwards insisted with Watson to deposit the bill for both their behoof, and they accordingly signed the draught and deposited the bill afterwards. Connel charged Orr for payment, and Orr suspended and produced a bill of the same date and sum, payable to the same persons, and written by Watson, and by him discharged. Connel pursued improbation of the bill produced by Orr, and he has abidden by it *sub periculo falsi*. Orr has also raised improbation, and Connel offered to abide by *qualificate* that this bill was by Watson deposited as the true bill;—and after long debate, Whether he should abide simply or not? it carried to allow him to abide *qualificate*. *Renit. multum* Arniston, Tinwald, et Drummore.

### No. 4. 1744, Nov. 2. OGILVIE *against* OGILVIE.

IMPROBATION being proponed against the warrants of some adjudications after they had by a decret-arbitral been ranked with the other creditors, particularly the pursuers; the warrants were amissing, and it was made a question at the Bar, Whether falsehood is competent against writs concerning which a decret-arbitral had been pronounced or if falsehood by the regulations 1695 is only competent against the submission or decret, or the arbiters'

proceedings? We all agreed, that unless falsehood had been specially submitted and determined, that it is competent; but then we thought these warrants being now lost and amissing not sufficient;—and therefore adhered, but with the addition, in respect no direct evidence was offered of the falsehood.

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### INDEFINITE PAYMENT.

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No. 1. 1739, Nov. 9. *FORBES against INNES.*

THE Lords found that the indefinite payment must be imputed as the creditor would have it, to the debt worst secured, and they considered the engagement for Sir John Gordon not as a subsidiary obligation, which implies a condition of discussing the principal, whereas here Robert undertakes the debt on condition that the creditor would not follow out the diligence he had already raised.

\* \* The case, Creditors of Harwood against Paterson of Kirkton 7th December 1742 is referred to as decided in the same way. That case is thus mentioned in the Notes.

FIND that the creditor may apply indefinite payments or intromissions to payments of such debts as were not secured by inhibition and other diligence. We also thought that he could likewise apply these intromissions to payment of debts not bearing annualrent, but the point seemed finally settled by the decret 1737 which ascertains the sum that bears annualrent.

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### INDEMNITY.

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No. 2. 1747, July 3. *ALEXANDER against DENHOLM.*

DENHOLM having in several different companies scandalized and injured Alexander, that he had given notice to the Rebels of the Duke's march which had occasioned Alexander to be confined till he proved his good character; he now sues Denholm for damages, and Denholm pleads the indemnity, which the Sheriff sustained; and on a bill of advocation we were divided about the indemnity; the President against it. Arniston and I wanted first to see the proof, but at last we agreed to advocate.

No. 3. 1752, Feb. 26. *STRACHAN against M'LACHLAN, &c.*

STRACHAN pursued these four defenders, libelling that in February 1746 M'Lachlan who was Aid-de-Camp to General Husk, and Bruce, Judge-Advocate to the army, when