1682. *February.* Mr GEORGE ROME *against* PEPPERMILN.

No 57.

THE active title in an improbation being an infeftment in the year 1621, and the defender, to satisfy the production, having produced a charter and sasine in anno 1622, relative to an apprising before the year 1621, by virtue whereof they had been in possession of the lands from the year 1646,

THE LORDS granted certification unless the apprising were also produced, viz. the decreet of apprising with the grounds and warrants, (but not the executions after so long a time) seeing the defender could not allege 40 years possession by virtue of that infeftment. Here the defender did not offer to prove the tenor of the apprising, or to debate on his production as sufficient.

Harcarse, (IMPROBATION AND REDUCTION.) *No* 527. *p.* 146.

1682. *March.* MARQUIS of ATHOLE *against* The EARL of BREADALBANE.

No 58.
The same term was appointed for the pursuer to prove that his lands were part and pertinent, and for the defender to produce. See No 54. p. 6648.

In an improbation of the rights of the vassals of the lordship of Kinclevin, at the instance of the Marquis of Athole, as constable of the castle of Kinclevin, and the King's Advocate concurring for his Majesty's interest, as superior of the lordship,

It was *alleged* for the Lord Breadalbane; That the charter produced not containing his lands *per expressum*, he was not obliged to take a term, till the pursuer proved that his lands were part and pertinent of the lordship of Kinclevin.

Answered; The defender cannot contravert the King's right as superior, for whom his Majesty's Advocate concurs in the process.

Replied; The King does not pursue as superior paramount, but only calls for the evidents of the lordship of Kinclevin, of which the defender knows not his lands to be a part, till it be proved; nor is he obliged to disclaim, seeing baronies are sometimes dismembered from a lordship whereof they were original parts.

"THE LORDS ordained the defender to take a term to produce, and the pursuer to prove part and pertinent at the same term."

Harcarse, (IMPROBATION AND REDUCTION.) *No* 800. *p.* 146.

1684. *February.* Mr CHARLES HUME *against* The EARL of HUME'S VASSALS.

No 59.
Found that an adjudger who was neither infeft, nor had charged the superior, could not insist in an improbation.

IN a reduction and improbation at the instance of the Earl of Hume, as infeft on an adjudication of the estate of Hume, the pursuer being debarred by horning *ab agendo*, there was afterwards compearance for Mr Charles Hume, who had adjudged the Earl's right, and consequently the dependence; and craved to be allowed to insist in his own name, as legal assignee by the adjudica-

No 59.

tion; seeing a rebel's factor, or his assignee, may carry on a process from which the constituent or cedent is debarred, by not having *personam standi*;

Answered; No man can insist in his own right and name in a process of reduction and improbation, unless he be infeft, or have charged the superior.

"THE LORDS found the answer relevant."

1685. *January* 8.—THE LORDS, *supra*, having found that Mr Charles Hume, who had comprised his brother the Earl of Hume's right, could not insist without being infeft in his own name, in a reduction and improbation raised by the Earl, who was at the horn;

It was afterwards *alleged* for Mr Charles; That he was within year and day of another adjudger who stood infeft, which infeftment by the act of Parliament is to be reputed his.

Answered; Though Mr Charles's diligence without infeftment could carry the real right that was in the Earl's person, it could not give him an interest in the action raised in the Earl's name, more than an appriser could insist in an action of mails and duties commenced by his debtor, without any voluntary right or assignation thereto.

Replied; A comprising, which is a legal assignation, must operate as much as a conventional.

"THE LORDS sustained the allegeance and reply, and allowed Mr Charles to insist in the action."

Fol. Dic. v. 1. *p.* 445. *Harcarse*, (IMPROBATION AND REDUCTION.) *No* 543. *p.* 151. & *No* 552. *p.* 153.

*** The like was found, Viscount of Kenmure *contra* Jolly, January 1687. *Harcarse*, p. 153.

No 60.

A trustee had apprised for behoof of a party, whose creditor again apprised this trust interest. This found no title to the creditor, not infeft, to improve other apprisings of the same property, until a declarator of the trust should be discussed.

1684. *Febrnary.* BRODIE *against* ELPHINGSTON and SCOT.

BRODIE of Miltoun having apprised Johnston his debtor's lands, and also a back-bond granted to his debtor by a trustee, who had apprised for the debtor's behoof a piece of land belonging to Provost Gray; Miltoun raised an improbation against the other adjudgers of Gray's estate;

For whom it was *alleged*, That there could be no such process sustained at the pursuer's instance, unless he derived a right from Gray; otherwise people might be put to propale their rights to persons having no interest, upon improbations raised at random, whereby any weakness in men's securities might be exposed to such as would take advantage of them.

Answered for the pursuer; That any person infeft in lands, has good interest to call all whom he knows or suspects to have a right thereto, to the effect he may understand the strength of his own right, and purge it from in-