

1610. July 25. DOUGLAS against LORD BUCCLEUGH.

No 95.

In an action of improbation pursued by Sir James Douglas of Drumlanrig, knight, against Walter Lord Scott of Buccleugh, for exhibition of his writs of the barony of Hawick, granted to him and his predecessors by the King's Majesty, and his Highness's predecessors, it was *alleged*, that seeing the pursuer's infestments were, in *anno* 1509, granted by King James IV. upon the recognition, that the Lords cannot compel the Lord Buccleugh to produce any infestments granted by the Kings before that time. To the which it was *answered*, That the allegiance ought to be repelled, except they would condescend upon some right granted by the Kings for the time, before the same year 1509; in which case, if they would produce the same, the LORDS would take order for all others not produced; otherwise certification ought to be granted, as was decided betwixt the Earl of Glencairn and the Earl of Home.*—THE LORDS repelled the allegiance, and declared that if they would not produce an infestment under the Great Seal, before the said year 1509, that they would consider of the allegiance.

Kerse, MS. fol. 204.

1612. February 7. SCOTT against JOHNSTON.

No 96.

In an action of improbation pursued by Scott of Bonnington and Johnston of Wamphray, the LORDS found, that in respect Bonnington, in his own cause of improbation, had produced all such writs as he had, and declared that he had no more, therefore he could never be holden to produce any out of his own hands thereafter; and yet they admitted him to prove the having of the evidents by Wamphray himself; which probation they restrict to writ, or oath of party; and that because it was alleged by Bonnington, that there was a charter accepted by Wamphray, wherein there was a reversion inserted, which was directly contrary to the writs produced, which bore no such reversion. Thereafter the matter being reasoned *in presentia*, the exception was found relevant to be proved *per testes omni exceptione majores*, and that these witnesses should be such as could read and write.

Kerse, MS. fol. 205.

* * Haddington reports the same case :

THE Laird of Wamphray pursued Simon Scott for improbation of all reversions, contracts, bonds, and securities for making reversions alleged made to him, his father, or good-father, by this Wamphray, his father, good-father, or

* Examine General List of Names.

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grand-father; and that in like manner, Scott of Bonnington pursued Wamphray for improbation of all infeftments of the said lands made by Bonnington, or his predecessors to Wamphray or his predecessors; in which processes it was ordained that *simul et semel* they should *hinc inde* producè all that they had; conform to which ordinance, Wamphray having produced his infeftments, and his predecessors of the lands, and Scott having produced some writs on inventory, declaring that he had no more, whereupon by minute of process certification was granted for all that was not produced; the matter being thereafter called, Scott of Bonnington *alleged*, That no certification could be given against him for three reversions of the said lands made to his forbiers, because they were in the defender's own hands, at the least in the hands of his father or good-father, to whom he was heir, one of which reversions was contained in a charter of the lands accepted by Wamphray's forbiers. To this was opposed Scott's former declaration, that he had no other reversions nor were produced, and the minute contained certification granted against all others. The parties having disputed very contentiously upon the certification which was sought, the LORDS began to consider that it was hard to prejudge a man of his evidents by a certification, especially no act being extracted; and, upon the other part, considering what great inconvenience should arise, if any man, who, upon suspicion of falsehood, being called for improbation of writs, not being able to produce any further writs, should offer to prove by two witnesses that the evidents called for were in the pursuer's or his predecessor's hands, he should have no other adminicles to make up evidents which never were *in rerum natura*, but two false witnesses, who deponing confidently upon preparation of well contrived falsehood, could not perhaps be found in any contrariety, but might make their depositions so well to agree, as it should be the most dangerous and remeidless falsehood that ever was devised; and the said LORDS being specially moved with the long silence of Scott and his predecessors, who, these fifty or threescore years bygone, had never pursued for any such reversions, which they would not by appearance have omitted, if they had had right to any such writs; therefore the LORDS found the allegiance relevant to be proved in this manner, that such reversions had truly been in Bonnington's predecessors' hands, as their own proper evidents, and thereafter came in the hands of Wamphray's predecessors, that this should be proven *per testes omni exceptione majores* who could read and write, and should so perfectly prove all necessary circumstances of the exception, as might give full satisfaction to the Lords in their conscience, that the same was true, otherwise they would assoilzie; and farther, they declared that the defender delaying the pursuer by the manner of probation, that if he succumbed in probation thereof, the LORDS would not permit him to produce the reversions, albeit they were in his own hands.

Haddington, MS. No 2391.