

1628. February 29. NITHSDALE against WESTRAW.

No 113.

CERTIFICATION was granted against retours although they may be had in the Chancery which is a public register, because certification can be granted against any infestment, if not produced, although it may be had in the register of the director of the Chancery, much more against retours.

Certification was refused to be granted against retours or services before the year 1544, (at which time the registers were burnt by the English), *i. e.* all retours and services which the defender will make faith, are not in his own hands.

Fol. Dic. v. 1. p. 447. Durie. Spottiswood.

* * * This case is No 25. p. 5192.

* * * The same case is mentioned by Kerse:

In improbations no production of retours before the year of God 1550, except they granted the holding of them. *Item*, found that the act of prescription by retours after three years is not extended to improbations.

Kerse, MS. fol. 208.

1628. July 18. MARK KER against SCOTT of HARTWOODMIRE.

No 114.

If a writ registered in the books of Council and Session, be called for to be improven, if the same has been registered after the intending of the cause, the defender must travel with the clerks to produce the principal, and the pursuer must seek it from the clerk to produce, in case it has been registered before the intending of the cause.

Fol. Dic. v. 1. p. 448. Auchinleck, MS. p. 94.

1632. March 21. ERSKINE against RENTON.

No 115.

THE Laird of Wedderburn, the Lord Erskine and others, pursued an improbation of an inhibition raised by the Laird of Renton against Sir George Home of Manderston. The defender having produced the extract of the inhibition with the principal executions, the pursuer *alleged*, the extract could not satisfy the production in respect of the act of Parliament 1581, cap. 119. Yet the LORDS sustained it, as they had done before between Sir James Dundas and Symington of Howburn.

Fol. Dic. v. 1. p. 448. Spottiswood, (IMPROBATION.) p. 169.