

48 years since the infeftment and comprising foresaid was expired; the LORDS found, after so long a time the party was not holden to produce this assignation, and therefore that the sentence, comprising, and others following thereupon, ought not to be reduced for not production, that writ never being called for, nor quarrelled at any time before, and the comprising thereupon having taken effect, by infeftment and possession continually sinsyne unquarrelled, and the assignation not being a material and fundamental right of the land, and the pursuer having no right from the cedent.—See PRESCRIPTION.

Act. *Advocatus & Nicolson.*

Alt. *Stuart & Aiton.*

Clerk, *Gibson.*

Fol. Dic. v. I. p. 442. Durie, p. 490.

* * * Spottiswood reports this case :

IN the action of improbation and reduction, pursued by the Earl of Kinghorn against George Strang, the LORDS found, that none ought to improve an assignation, but only he who succeeds to the cedent, or deriveth right from him.

Spottiswood, p. 169.

* * * This case is also reported by Auchinleck.

1630. *February 5.*—IN an action of improbation and reduction, pursued by the Earl of Kinghorn against George Strange, for production of writs made by the Earl's grandsire, to whom he was served heir, and for comprising and assignation made to him, at whose instance the comprising was deduced against the Earl's father, and for writs made by the Earl's goodsire and grandsire; it was *alleged*, Seeing the Earl had not libelled, that he was heir to his father, nor that his father was heir to his goodsire, and so forth; that no writs made by the grandsire, goodsire, or father, could be produced. To which it was *replied*, That the Earl offered him to prove, *cum processu*, that he was heir to his father, and that his father was heir to his goodsire, &c. THE LORDS sustained the summons, by reason of the reply.

Auchinleck, MS. p. 97.

1630. *February 19.*

DOUGLAS *against* LAIRD of SWINTON.

ONE Douglas, heir to William Douglas, who was infeft in Coldingham, by John Stewart, and Alexander Cranston of Moreston also infeft, to be holden of the said John, pursuing improbation against the Laird of Swinton, for writs of the lands pertaining to Coldingham, holden of the King, and granted by the King, author to John Stewart; this action was sustained at the instance

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of the pursuer, upon his base infeftment, for production of the public infeftment, and all rights of these lands, made to the defender, because they were libelled to be false.

Act. Craig & Stewart.

Alt. Nicolson & Nisbet.

Clerk, Gibbon.

Fol. Dic. v. I. p. 442. Durie, p. 493.

. Auchinleck reports the same case :

ANNA DOUGLAS, general heir served and retoured to umquhile William Douglas of Blackerston, who was donatar to the escheat and liferent of John Stewart of Coldingham, whereupon he had obtained a general declarator, and which umquhile William was infeft in the lordship of Coldingham, pursues the Laird of Swinton for improbation of old writs and evidents, made by her father, or any others, his predecessors, priors of Coldingham. To which (it was *alleged*,) that she, as heir, could not be pursued, by virtue of the gift of John Stewart's escheat and liferent, except the declarator obtained by her umquhile father was first transferred ; which allegiance the LORDS repelled, and found no necessity of transferring the general declarator. To which second part of the pursuit it was *alleged*, That she being only served general heir, and not being seased, could not pursue writs made by the Priors, but for improbation of these made by her father, to whom she was, and could succeed as heir, *jure sanguinis*, which they likewise repelled.

Auchinleck, MS. p. 97.

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GLENCAIRN against MUNRO.

In improbation pursued by Glencairn, action sustained against Munro upon a charter without sasine, and without confirmation, except an old transumpt in *anno* 1463, and the exceptions repelled *contra* the production, in respect we offer us to prove our rights good by that production. *Item*, In the same cause, an allegiance of not citation of my Lord Lovat, who was infeft holden of the King, repelled upon Glencairn's declaration, that it should not prejudice the Lord Lovat ; and, when the matter should be disputed, *quoad jus*, they offered to prove that he was denuded, and that the infeftment was taken in his behoof. *Item*, In this same case, sustained incident at the instance of Robert Munro of Foulis, albeit he was called for writs made to his predecessors, *idque ex causa*, because it was verified that he was denuded in favour of my Lord Lovat.

Kerse, MS. p. 208.