

No 39.

A party was found entitled to improve a citation altho it was alleged he had acknowledged it, as the effect only was to repon a party to make oath on a debt.

1630. November 25.

THOMSON *against* RIG.

THE Lord Treasurer and George Thomson, writer, having pursued one Rig before the Exchequer, for some monies owing by him to Robert Philip, who was found to have intromitted with some of the King's Majesty's taxations in Dumfries; and the debt owing by Rig to Philip being referred to Rig's oath, and he summoned to that effect, and holden as confessed, and decerned; he intents improbation of that his citation, by action before the Session; wherein the Treasurer and George Thomson *alleged*, That he could not be heard to improve that execution, because they referred to the improver's oath, that the execution was the proper hand-writing of his own father, all written by his father's own hand, and subscribed by him, and stamped with his stamp; and so he ought not to be heard now after his father's decease, to improve that deed, whereby to make him infamous, and to lacerate the name and fame of his father, after his death, which is against all humanity and Christianity, for a son to do to a father, thereby to accuse him of such a fault, for the which his father, if he were living, might be criminally accused and executed, to an ignominious death; which accusation, in all law, civil and Christian, is denied to a son against the father; specially ought it so to be found in this case, seeing he offers to prove, that the same party improver got a copy of the same summons, whereupon he was holden as confessed, sent and delivered to him, which came to his hands, and whereupon he compeared before the Exchequer, and produced the copy out of his own hands, and sought protestation against the summons, and offered him ready for the cause; so that he cannot be heard to improve the same, having acknowledged his citation, as said is. THE LORDS, notwithstanding of the allegiance, which they repelled, found that he might be heard to improve this citation, seeing it tended only to repon the party, to give his oath upon the debt; or the party might prove the debt otherways than by his oath, as he best might.

Act. Nicolson & Burnet.

Alt. Stewart & Cunningham.

Durie, p. 541.

1630. December 1.

RAMSAY of Cockpen *against* Lord CONHEATH.

No 40.

IN an improbation of the charters, sasines, and other writs of the lands of Southside, made to Conheath, by the umquhile Lady Cockpen, pursued at the pursuer's instance, as having right by a bond made to him by the said umquhile Lady his mother, containing an heritable disposition of the said lands, the LORDS found, That the bond (no real sasine following thereon in the pur-

suer's favour), could not furnish him action to call for reduction and improbation of the said real writs of the said lands made to the defender.

No 40.

Act. *Hart.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 445. Durie, p. 544.*

* * Spottiswood reports the same case :

ELIZABETH RIGG, Lady COCKPEN, by contract of alienation, disposed to John Ramsay, her son and apparent heir, the lands of Southside; who, upon that disposition, intended an improbation against the Laird of Conheath, of all right he or his authors had to the said lands of Southside. *Alleged*, He had no interest to improve his rights of these lands, because the pursuer was not seised in the same, although they were disposed to him by contract; and he not being infeft, could not seek to improve any real rights of the said lands, nor urge the defender for production thereof, having no real right himself; which allegiance the LORDS found relevant.

*Spottiswood, p. 168.*1631. *January 18.*SHERIFF of FOREST and The KING'S ADVOCATE *against* TOWN of SELKIRK.

No 41.

IN an improbation and reduction pursued by the Sheriff of Forest and the King's Advocate against the Town of Selkirk, for the burgh mails and small customs, wherein the Sheriff pursuer was infeft, it was *alleged* by the defenders, That they could not be holden to produce, at the Sheriff's instance, because the burgh mails and small customs being of the King's annexed property, no infeftment could be given thereof; to which it was *answered*, That whether his infeftment was good or not, yet seeing the pursuit was at the King's Advocate's instance, they ought to produce, and then reason whether his right or theirs was best. THE LORDS found, they ought to produce at the Advocate's instance, and that Sheriff might be informer of the King's Advocate, seeing the Sheriff had made count to the Exchequer of the burgh mails and small customs of Selkirk, diverse years bygone.

1632. *January 31.* IN the same action, after the town of Selkirk had produced certain infeftments, granted by King James V. they *alleged* they were not holden to produce any further, because the pursuer's infeftment, whereupon he pursued the improbation and reduction, was later than their infeftments produced; and, till he produced older infeftments than theirs in an improbation, they were not holden to produce further; which the LORDS found relevant, and therefore the Sheriff was content to produce older infeftments.

Auchinleck, MS. p. 98.