

No 4.

1633. March 22. The KING *against* EARL of STRATHEARN.

THOUGH a retour be reduced as proceeding upon mistake, yet the jurors on the inquest may be acquitted as having been under probable cause of error.

. This case is No 116. p. 669I, *voce* IMPROBATION.

No 5.

A retour found a sufficient title, where no other party had appeared, and alleged a right.

1634. February 17. MAXWELLS *against* M'BRAIR.

IN an action pursued by Maxwells, who were infest in certain lands upon a retour as heirs to their father, against Robert M'Brair, for the mails and duties of the lands, both since the date of the retour and infestments, and also of certain other years preceding the retour, since the decease of their father, to whom they were served and retoured as heirs; the LORDS sustained the action upon the said sasine, proceeding upon a retour, for the years also since the decease of their said predecessor, and before the retour; albeit it was *alleged* for the defenders, That they could not pursue for these years, seeing there was no right standing in their person to the same of these years: Which allegiance was repelled, in respect the right proceeded upon a retour, which was sufficient to sustain the pursuit for these years, seeing there was no other party compeared to allege any right thereto in the person of any other; and for these years, albeit they might be in non-entry, yet being in feu lands, the superior could have no right but to the retoured duty, and not the full mails, before declarator.

Act. Belshes.

Alt. Cunninghame.

Clerk, Gibson.

Durie, p. 110.

No 6.

Exceptions to a retour received without reduction.

1636. February 10. MURRAY *against* SINCLAIR and MEIKLE.

ONE named Murray, being served and retoured heir to umquhile _____ Murray, whereby he claimed right to certain bonds and obligations made to the defunct, to whom he was retoured heir, and pursuing the haver of the writs, for exhibition and delivery of the same writs, as belonging to him as heir, and having made another Murray assignee thereto, which assignee pursuing for the same; the defender *alleged*, That this retour could not furnish this action to the cedent himself, and consequently not to this assignee; because he referred to the cedent's own oath, that he was not attingent in no manner of degree of blood, by no kind of distance, to the defunct, to whom he was served heir, and referred also to the assignee's oath, that he knew the same to be true; and it being *answered*, That this ought not to be received so summarily, by way of exception against a retour past the Chancel-