

S E C T. III.

Production in Reductions and Improbations.

1577. December 10. FORRESTER against JARDENE.

ROBERT FORRESTER, Provost of Stirling, persewit the Laird of Jardene to hear and see ane decreet past upon ane warning reducit; and callit to produce the precept of warning, whereupon the said decreet proceedit, the whilk was above the space of 17 or 18 years since, and since the decreet was given; and allegit in his summons, with the execution of the decreet, was false and fenziel, and being produced, he would improve the same.—It was *answerit* be Jardene, He was not obligit, and could not produce the said precept, in respect it was so long a time bygone, and that the same, with ane process, being in the clerk's hands, could not have been kept so long time.—THE LORDS found, That *quia fuit in factis antiquo*, they would not reduce the said decreet for non-production of the precept of warning.

Fol. Dic. v. I. p. 354. Colvil, MS. p. 258.

No 21.

The Lords refused to reduce a decree, pronounced 18 years before, for not production of the warrant on which it proceeded.

1610. December 8. ROBSON against MOSCROP.

A PRECEPT of poinding, directed upon a decreet of the Commissaries, being pursued and sought to be improven with the executions; the LORDS found process, and granted certification for not production of the precept, seven or eight years after the date thereof.

Fol. Dic. v. I. p. 354. Haddington, MS. No 2046.

No 22.

1665. February 2. ANDREW KERR against PRINGLE.

IN an action of improbation of a confirmed testament, pursued at the instance of Andrew Kerr against Pringle, the LORDS found that the executors dative were not holden to produce the edict whereupon the decreet dative proceeded; and that the not recording of the testament dative in the Commissary's register, could be no ground for improving the testament, since it was not the executor's fault but the clerk's.

Fol. Dic. v. I. p. 354. Newbyth, MS. p. 25.

No 23.