

1665. *January 20.*LITTLE *against* EARL OF NITHSDALE.

No 47.

THE pursuer calling for all deeds affecting his lands, will not obtain certification but against deeds flowing from authors with whom he connects a progress.

An apprising with a charge, without infestment, sustained as a title in an improbation of all rights affecting the lands, though the apprising was on the pursuer's own bond, who was apparent heir, simulate, and assigned to himself.

Fol. Dic. v. I. p. 444. Stair.

* * * This case is No 26. p. 5194.

* * * Newbyth reports the same case :

DAVID LITTLE having given bonds of L. 2000 to Captain Thomson, for the said Little's own behoof, Captain Thomson deduces an apprising against the said David Little, as lawfully charged to enter heir to his father, and thereupon pursues reduction and improbation against the Earl of Nithsdale, Mr Andrew Cunningham, and Francis Scott of Erblin, who have right from Nithsdale ; and libels production of all writs granted by David Little's predecessor, to whom he may succeed *jure sanguinis*; and craves certification against any writs alleged by the pursuer's predecessor, to whom he may succeed ; because an apparent heir cannot pursue for production, or reduction and improbation, of any writs made by his predecessors, to whom he may succeed as apparent heir, not having any title in his person, nor being actually served to him ; and which is more, the title of general heir, seeing the same includes only personal rights, cannot be any ground, whereupon to reduce infestments, without a special service and infestment, far less an apparent heir who has no title at all.—THE LORDS sustained the pursuer Captain Thomson's interest, and repelled the defence, in respect he was infest ; and found he might crave certification for production for reducing of the defender's rights.

1665. *January 21.*—In the improbation pursued at Captain Thomson and David Little's instance, against the Earl of Nithsdale, mentioned the 4th January 1665, the LORDS granted certification against the writs not produced, notwithstanding of the hail defences, except the seventh, in respect of the replies made thereto.

Newbyth, MS. p. 15. & 20.