

and tenements to the said Janet, conform whereunto the said Janet, and others having right from her, were in possession till the year 1657, by the space of 37 years. The said Adam raises a summons of improbation of the saids whole writs; and compearance being made for William Blackwood, in whose person the right of the said apprising and disposition and infeftments are now come by progress, compearing and alleging that no certification ought to be granted against the writs libelled, albeit the same were not produced, viz. the letters of apprising, with the execution thereof, the principal bonds, the extracts being produced; the LORDS found, that the defender needed not to produce the letters of apprising, with the executions, the comprising being dated so long time ago; and found, that the defender producing the executions, needed not to produce the principals, in regard the registers are now lost; and where the extracts are not produced, they granted a time to the defender to prove the tenor of the bonds.

*Newbyth, MS. p. 84.*

No 5.

1669. February 19. SWAN against BURNET Tutor of Leyes.

In an improbation pursued at the instance of James Swan against the said tutor, the LORDS did refuse to grant certification for not production of the executions of a comprising led in anno 1641, in respect the several executions were repeated and set down in the decret of apprising, bearing the messenger and witnesses' names and designations; notwithstanding, it was *alleged*, that the comprising was to the behoof of the heir, there never having been any thing done thereupon since the date thereof; but, before extracting, ordained the tutor to give his oath if he had the principal executions; and, if not, to declare what way the same were lost.

*Fol. Dic. v. 1. p. 354. Gosford, MS. No 121. p. 45.*

No 6.

*Post longum tempus* the executions of a comprising need not be produced in an improbation, they being repeated in the decret. In this case almost 30 years had elapsed, before the improbation was raised.

1675. February 18. BROWN against HUME.

WILLIAM BROWN pursues reduction and improbation of a decret of the Sheriff of Berwick, and the whole grounds and warrants thereof, and insists for certification *contra non producta*.

Wherein the LORDS found, that the decret being pronounced 20 years ago, the defender was not obliged to produce that part of the warrants of the decret which useth to remain in the clerk's hands, viz. summons, executions, supplement, and executions thereof, and charge to enter heir, and therefore sustained only certification against the decret, and bond which was the ground thereof.

*Fol. Dic. v. 1. p. 353. Stair, v. 2. p. 324.*

No 7.