

cart, &c. ; which was equivalent. (This horning the defenders contended, though it was sufficient in an action of maills and duties, yet not in an improbation. *Vide* thir same parties, 24th July 1678.) *3tio*, In an improbation, they behoved once to produce, and then debate on the validity of their right ; though, in a naked reduction, they would not, (unless they immediately secluded him by production of a better right.)

Reidfurd ordained them to take a term.

Next, ALLEGED, Their authors were not called.—We desired them to condescend, and they should be cited to the same term.

This answer was sustained as relevant.

*Advocates' MS. No. 720, folio 318.*

1678. July 24.—In the reduction pursued by Cochrane of Rochsolls against Carleton, &c. (2d Feb. 1678 ; ) they having given in a condescendance upon their authors in the lands, it was alleged no respect could be had to the said condescendance, because severals of them were not designed, and they might as well give in the names of jockeys and vagabonds, or forge names ; and it was not sufficient to condescend on the shire where they lived, but at least they behoved to tell the parish, that if there were no such person dwelling there, they might get a testificate from the minister and elders thereon, or might at least cite him at the market-cross of that shire.

*Vol. I. Page 11.*

1680. November 6.—In the improbation, Mr William Cochran of Ruchsoles against Enterken and others, (24th July 1678,) the Lord Newton would not sustain nor allow the craving a certification against the right of lands or other heritable titles, whereupon infestments had actually past, upon Ruchsoles's personal interest, as a creditor, and one who had inhibited ; and found that none but one infest could seek improbation of real rights of lands : albeit it was alleged that *actio falsi est popularis et cuivis competit* ; and that improbations have been sustained at the instance of one who was only served heir by a general retour ; and that a creditor had interest to remove all obstacles out of the way, and then he might affect it by a real diligence himself. Others affirmed this ought to precede ere he could have interest to quarrel the rights of lands wherein as yet he hath no right. *Vide* Durie, 4th February 1630, *Earl of Kinghorn*. It seems, any may propone improbation, though not infest.

*Vol. I. Page 114.*

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1680. November 6. JAMES DEAS against His TENANTS.

ONE hath an infestment of annualrent, and a decret of poinding the ground thereupon : he dies ; and, while the son is making up a title, the debtor who granted the annualrent disposes the land to another, who, by virtue thereof, possesses a year or two : the heir of the annualrenter, being now infest, pursues not only for a poinding of the ground, but likewise convenes him who introduced by virtue of the disposition, *personali actione*, to refund.

Newton refused process against him, they being *fructus bona fide percepti*. But he may be in some mistake ; for Durie, 15th March 1637, *Guthry*, tells, the Lords sustained a pursuit of the same nature, and declared they would follow this decision in all time thereafter in all such cases.

*Vol. I. Page 114.*