

1683. *January.* BOGLE *against* WILLIAM ANDERSON.

No 24.

A procuratory for using an order of redemption, must be produced in a reduction, even after 20 years.

IN an improbation, certification being craved against a procuratory for the using an order at a second appriser's instance against the first,

*Alleged* for the defender; That the instrument mentions the procuratory; and procuratories are not looked upon as necessary to be kept more than precepts of warning; and now it is 20 years since the granting of the procuratory in question; and the defender offers to make faith, that such a procuratory was truly given.

*Answered*; The procuratory being an essential part of the order, it ought to be produced; and if there was no procuratory, there could be no order. Now here the notary to the instrument has given a declaration under his hand, that the order was false, and forged by himself; and has fled away from justice.

THE LORDS granted certification against the procuratory; but superseded extracting till the 20th March; and allowed the proving of the tenor of the procuratory *incidenter*.

*Fol. Dic. v. 1. p. 354. Harcarse, (IMPROBATION & REDUCTION.) No 534. p. 148.*

ECT. IV.

Grounds and Warrants of Apprisings.

1628. *February 29.* E. NITHSDALE *against* L. WESTRAW.

No 25.

Found, that certification could not be granted against comprisings, on which sasines were expedie; but if no infetment had been taken, they must be produced.

IN an improbation betwixt the E. Nithsdale and Westraw, the LORDS found, That pursuers of such actions may pursue for improbations of retours, whereby the defender in these cases, or any of their predecessors, are served heirs to their predecessors in the lands controverted; for if the retours fall, the lands will be in non-entry, and so the pursuer has sufficient interest to quarrel them, and crave production thereof. *Item* it was found, that albeit retours be registered in the chancellery, yet that the defenders, who are called therefor, are holden to produce the same, and if they do not, that certification should be granted against them, and that the pursuer is not holden to produce and extract them. It was also found, That no certification, neither for retours nor services, should be granted, which are of any date anterior to the year 1546, in respect of the burning of the town, and most public places in the country, whereby it may