

grounds commenced against the minor's father in his own lifetime, so as the father had occasion to consider and consult his defences, and therefore the privileges ought not to be sustained in this case; *3to*, The acts of parliament require not the dwelling-house to be named, although in hornings practice requires it, because of the great prejudice that may follow upon these, and for that charges of horning may be private; for improbations are publicly called from the bench; and it is only the first execution that is here quarrelled, for the second execution bears 'personally apprehended;' *4to*, The vestige of stamping appears, and the execution is old; *5to*, Executions against tutors and curators need not bear the leaving of a copy, and yet, *de facto*, copies were left; nor is there place for this objection, seeing there is compearance for the defenders and their curators.

THE LORDS repelled the allegiances in respect of the answers.

*Harcarse, (IMPROBATION AND REDUCTION.) No 566. p. 157.*

1688. February 16. ROGER HOPKINS *against* The DUKE of GORDON.

A RIGHT of some teinds and patronages being disposed for L. 300 Sterling, with an express provision, That, in case of not-payment of the money at a precise day condescended on, the disposition and assignation should be null and void; and the assignee having transferred his right to the Duke of Gordon, who infest himself thereon, the disponent commenced reduction and improbation of the assignation, and all that followed thereon, upon the irritancy above-mentioned.

*Alleged* for the defender, That the pursuer's title being a personal clause in the disposition, it was not sufficient to reduce infestments and real rights.

*Answered*; The irritant clause being *in gremio* of the defender's author's right, he could not be ignorant of it; and it is sufficient to reduce the disposition and infestment to himself *in consequentiam*.

THE LORDS sustained the pursuer's title and reduced.

*Harcarse, (IMPROBATION AND REDUCTION.) No 576. p. 160.*

1709. December 16.

FARQUHARSON of Innercauld *against* EARL of ABOYNE.

FARQUHARSON of Innercauld pursues a reduction and improbation against the Earl of Aboyne, of his right to the lands of Grodies, and calls for production of all writs in his person concerning these lands. *Alleged*, I'll take a term for no right, except those from whom you derive right and connect a progress; for *quo jure* can you compel me to produce rights flowing from persons whom you neither represent, nor shew any right derived from them. *Answered*, This doc-

No 63.

No 64.

No 65.

A pursuer of an improbation can reduce no rights but those flowing from his authors, with whom he is connected by progress.

No 65. trine would quite enervate the design of that excellent useful process of reduction and improbation, where certification passes against the writs not produced ; which invention is peculiar to this kingdom, and forces the parties to bring all their rights and claims upon such lands into the field, that in a competition it may appear who has the best right to the property ; and I may remove all impediments out of the way that can disturb my property or possession, from whatsoever person they flow, as Stair observes, lib 4. tit. 20. sect. 14. And to restrict the effect of certifications only to writs flowing from the same authors whom you represent or derive your right from, is to narrow, diminish, and abridge this useful process. *Replied*, Whatever inconvenience may be in this restriction, there is more danger and damage the other way ; for, suppose a man adjudges lands from his debtor, and puts in baronies and tenantries whereto he never had any right, shall this entitle you to pursue an improbation against the heritors and possessors of these lands, and make them open and propale their charter chests to you, who show no right in your debtor's and author's person to these lands? Such a practice were of the utmost consequence to shake the security of the lieges ; and therefore the LORDS have ever restricted this general clause calling for production of the hail writs and evidents of the lands in question only to those granted by themselves, their authors and predecessors, whom they represent, and no further, as Hope observes, 20th Dec. 1622, Lord Cathcart against his Vassals, No 14. p. 6617. ; Durie, 18th Dec. 1623, Monymusk against Forbes, *voce* PRESCRIPTION ; and Stair, 24th July 1673, Shaw against Watt, No 52. p. 6644. and many since, as Hay of Alderston, Dallas of St Martin's, Cathcart of Carbiston, \* &c. *Replied*, The old decisions run somewhat in that strain, before improbations were fully understood or brought to a consistency ; but the latter have not been so uniform, and Stair seems to think it an inconvenient custom.—THE LORDS would not recede from the current practice, and therefore sustained the defence, That the pursuer had no interest to reduce any writs or rights, but those flowing from his authors, or to whom he connected a progress ; but wished some regulation thereof in time coming by an act of sederunt ; but that will require mature deliberation, that by such general clauses the lieges may not be vexed, nor forced to debate with one who has no right from their author, but from a third party ; and it were fit the inconveniencies on both sides were rectified and prevented.

*Fol. Dic. v. 1. p. 444. Fountainball, v. 2. p. 542.*

1712. *January 29.*

JAMES OGILVIE, Son to the deceased JAMES OGILVIE, younger of Boyne;  
*against* DAVID EARL of LEVEN.

No 66.  
A bond being  
granted for  
the price of  
land by the

JAMES OGILVIE having right by progress to a bond granted by William Hamilton of Wishaw, to Walter Boyston, for a part of the price of the lands of

\* Examine General List of Names.