1626. *July* 14. HAMILTON *against* VASSALS of BARGANY.

No 19.
An improbation by a purchaser of lands from one infeft, calling for production of personal bonds, granted by the author and his predecessors, was sustained with this restriction, that certification should be granted for non-production, in so far as the pursuer might be prejudiced by the bonds, in his right to the lands libelled.

In this case action was sustained production and improbation of all writs made by the pursuer's father, grandfather and great grandfather, &c. without necessity that the pursuer should be served by progress. See No 13. p. 6617.

IN an improbation pursued by Sir John Hamilton against certain vassals of Bargany, the LORDS sustained this action of improbation, at the said Sir John's instance, as having right to the lands flowing from Kennedy of Bargany, his author, who was infeft therein, for production of all the writs libelled made to the defenders by his author, or by his said author's predecessors, enumerated in the said summons, to whom his author might succeed *jure sanguinis*; which action the said Lords sustained, at the instance of the pursuer, he being singular successor; and found the same also competent to him to pursue after that manner for production and improbation of the writs made by his author's father's goodsire, grandsire, and other predecessors, to whom he might succeed *jure sanguinis*, as said is; as his said author himself might do, if the pursuit had been at his own instance, in case he had not been denuded. Also the LORDS found, that it was not necessary, either to libel, or to instruct, that the pursuer's author was heir, or succeeded to these predecessors by progress, by whom the evidents libelled are alleged to be made, but that it was sufficient to libel in this, and all the like actions, that he is apparent heir of blood to them, without any qualification of any other progress of right derived in the pursuer's authors by course of succession, or being heir to each one of his predecessors, he shewing his author's self to be infeft therein, as heir to his father, or successor therein to him, which the LORDS found sufficient, seeing in him continued the succession of the blood uninterrupted *in linea recta*; and if he had been pursuer, he had no need to instruct any other right from each predecessor to his apparent heir succeeding in the blood, except the said descent in blood. But this contrary to the decisions made before; whereanent look February 1st 1622, L. Craigie Wallace, No. 13. p. 6617.; *Item*, February 26th 1622, Earl Kinghorn *contra* L. Inshsture, Sect. 6. *h. t.*; and February 13th 1627, Lady Borthwick, No 4. p. 6625.; December 3d 1634, Lo. Johnston, No 45. p. 6640. In this process also, the LORDS sustained the action, for production and improbation of personal bonds made by the said pursuer, his authors and predecessors foresaid, the same being this way restricted, viz. in so far as the pursuer may thereby be prejudged in his heritable and real right to the lands libelled.

In this process also, the LORDS found, That lands pertaining to the principality could not be disponed by the King, there being a Prince, except by the King, as being administrator to the Prince, so that if the same should be simply disponed by the King, and not *eo nomine* as administrator, any other thereafter acquiring right from the King, as administrator to the Prince, would be preferred to that prior right given by the King simply without relation to the principality; and where there was no Prince, there was no necessity to dispone, but as King, as in other dispositions made by the King, but the disposi-

tion would make mention, that the lands pertained, and were of the principality. See PRINCE OF SCOTLAND. No 19.

Alt. *Hope & Stuart.* Act. *Aiton & Nicolson.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 442. *Durie, p.* 218.

1627. *January* 25. STUART *against* FEUERS of Coldingham.

No 20.
A Lord of Erection coming in place of a prelate, was not debarred from demanding production of writs affecting the benefice, by the party's showing a right from a former prelate prior to the erection.

In an improbation at the instance of John Stuart, and certain of his creditors who had obtained heritable right from him of the lands and teinds of Coldingham for relief of their cautionry, and which were erected to the said John in a barony, and united in his charter granted to him by the King, against the feuers of the lands, and tacksmen of the teinds of Coldingham; the said John Stuart being debarred *ab agendo* by horning; and the other pursuers who had base rights to be held of him, being quarrelled in their right, because their sasine was given at one place, the lands and teinds lying far discontiguous, and which sasine proceeded from a warrant of charter and precept given only by the said John Stuart, not confirmed by the King to them; whereas it was *alleged*, That no subject had power to appoint such unions, or to dispone lands to any other after that manner, ordaining a sasine at one place to be sufficient for all the lands lying discontiguous; this allegeance was repelled, in respect of the union given to the said John Stuart, their author, by the King, and that he gave it to the pursuer as he had the same himself; so that it was not an union made by a subject, but flowed from the King. It being likewise *alleged*, That the base sasine given to the pursuers by John Stuart, to be held of himself, could not be a ground to furnish action to the pursuers (John Stuart's self being debarred by horning) to call for improbation of these defender's writs, who were vassals of the lands as he was, and that one vassal could not have this action against another vassal; this exception was also repelled, seeing this action affirmed the other vassals to have no right, but that the same, if any they had, was false; and so their rights falling, the pursuers remained proprietors and vassals of the whole lands. It being also *alleged* for Blackader, one of these defenders, that no process ought to be granted against him for the writs of the lands, for the which he was convened, because his right flowed from the Earl of Murray, regent, who was his author, and whose heirs of provision, mentioned in his charter of the same, were not called, who behoved to be found necessary parties in this action tending to avert his right; this exception was also repelled, because that person was called who was heir of line to the Earl of Murray, and he who represented the heir of provision concurred and assisted the pursuit. See BASE INFEFTMENT.

Act. *Craig.* Alt. *Belshes.* Clerk, *Gibson.*