

1627. February 13. Lady BORTHWICK against VASSALS.

IN an improbation, at the Lady Borthwick's instance, against the vassals of the Lord Borthwick, THE LORDS found, that the certification granted against the writs not produced, decerting the same to make no faith for not production, could go no further than the pursuer's own interest; which was her infeftment of liferent; and therefore restricted that certification, that the writs should make no faith against her, to be any impediment to her to bruik the said lands, during her lifetime allenary; and found, that albeit the said certification was so granted against the foresaid writs, in her favours, as liferentrix; yet that the same shall not be profitable to work, in favours of the fiar, or heritor of the said lands; but that, notwithstanding thereof, these same writs might be used against the heritors; and should not be prejudged by that certification, in case he should ever claim any benefit thereby; seeing they were not decerned to make no faith at his instance.—In this same process also, the LORDS found, that where a person, who hath acquired right, *ex titulo particulari*, from a stranger, to any lands; and calls for production and improbation of writs, made by that person, disponer of the land to that pursuer, as singular successor to him; and calls, also, for production of the writs, made by this acquirer, and pursuer's father, goodfire, grandfire, and others his predecessors, to whom he may be heir, to the persons called in that action, before the time of the acquiring of his said right, from the stranger, *ex titulo singulari*; yet, *hoc casu*, such actions ought not to be sustained, except the pursuer be heir to his father, or to that predecessor, who preceded immediately the time of his acquiring of his said right, as singular successor to a stranger, and from whom the rights are libelled to flow; which he quarrels: neither was it sustained, though it was replied, that the father of the singular successor, in the right of the lands, was infeft therein; and so he had reason to call for production of writs, made by him; except he had also eiked thereto, that he was heir to his father, who was so infeft: and consequently this pursuit, moved by the Lady Borthwick, upon her husband's right of liferent, made to her by him; who had acquired his right from the Earl of Lothian, who had comprised the same; and whereby he became singular successor; and whereby the course of his succession, to his predecessors and progenitors, in these lands, was interrupted; was not found a sufficient title; neither to her nor her husband; if he himself had been living, and pursuing this improbation, for improving of the writs made by his father; except he had been heir to his father. Albeit it was *replied*, That his father was infeft in the lands; seeing the comprising deduced against the pursuer's husband, as lawfully charged to enter heir to his father; and for his father's debts; was an interruption of the course of his succession in his

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No 4.

In improbations, pursued by liferenters, the certification must be restricted to the pursuer's interest; *i. e.* although the writs called for be decerned to make no faith, it is only meant, in so far as may prejudice the liferenter; but will not be at all beneficial to the heritor.

No 4. father's right, *ut supra*. See July 14. 1626. Sir JOHN HAMILTON (See IMPROBATION.)—March 5. 1630. E. WIGTON, (See IMPROBATION.)

A&C. Nicolson.

Alt. Hope & Lermont.

Clerk, Hay.

Fol. Dic. v. 1. p. 2. Duris, p. 272. & Spottiswood (IMPROBATION) p. 165.

1664. July 15. Earl of LAUDERDALE against WOLMET.

No 5.

A decree of certification, against a decree of valuation, obtained by a donator during Cromwell's usurpation, found to accrefce to the true proprietor when restored.

THE Earl of Lauderdale pursues a spuilzie of the teinds of Wolmet, against Major Biggar; who alleged absolutor, because the lands of Wolmet were valued and approven.—The pursuer *replied*, That the said decret of valuation was improven, by a decret of certification obtained there-against, at the instance of Swinton, having right to these teinds for the time; by a gift from the usurper.—The defender *duplicated*, That no respect ought to be had to the said certification; *1st*, Because this pursuer derives no right from Swinton; being only restored to his own right; and Swinton's right from the usurper found null: so that, as the pursuer would not be burdened with any deed of Swinton's, to his prejudice; neither can he have the benefit of any deed of Swinton's to his advantage. *2dly*, The said certification was most unwarrantable; in so far as the decret of valuation, being in the register of the valuation of teinds, the defender was not obliged to produce it; but the pursuer ought to have extracted it himself. *3dly*, All parties, having interest, were not called to the said certification, viz. Mr Mark Ker, the wadfetter, by a public infestment; in whose right Major Biggar, now succeeds. And *lastly*, The defender alleged, that he had a reduction of the certification, upon minority and lesion; and the unwarrantable extracting of it.—The pursuer *answered* to the *first*, That seeing Swinton did use the pursuer's right, all real advantages, which were not personal, but consequent upon the real right, and which belonged not to Swinton, *personaliter*, but as pretended proprietor; do follow the real right itself; and accrefce to the true proprietor; as if he had acquired a servitude, or had reduced the vassal's right, *ob non solutum canonem*. To the *second*, Oppones the certification, wherein compearance was made, for Wolmet; and three terms taken to produce; and no such defence was alleged, as that the valuation was in a public register. To the *third*, The pursuer needed not know the wadfetter; because it was an improper wadfet; the heritor possessing by his back-bond, as heritable possessor, seeing the decret of valuation was at the heritor's instance, it was sufficient to reduce it against his heir; for it would not have been necessary to have called the wadfetter, to obtain the decret of valuation; but the then heritable possessor: so neither is it necessary to call the wadfetter, to the reducing or improving thereof. To the *last*, No such reduction, seen, nor ready; neither the production satisfied.

THE LORDS repelled the defence, and duplies; in respect of the certification; which they found to accrefce to the pursuer; but prejudice to the defender, to