

- No 156. trary of which is frequently acknowledged in the pursuer's own libel, being inconsistent with several other reasons of reduction commonly libelled; that our law appoints writs to be produced to every one who can show he has an interest in the production; and it appoints the production to be under the penalty of certification of being held as false or feigned; this is not discerning them false or feigned, but only that they shall be of no faith in judgment, more than if they were false or feigned.—See APPENDIX.

Fol. Dic. v. 1. p. 452.

S E C T. VIII.

Grounds of Reponing against a Decree of Certification.

1622. *January 31.* AUCHINTORY *against* BRUCE.

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THE LORDS found a decret of improbation irreducible, albeit given for not compearance, and that it was sought to be reduced within half a year, and that no adminicle of improbation was taken away because the writ itself was.

Fol. Dic. v. 1. p. 453. Kerse, MS. fol. 207.

1629. *January 15.*

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THE EARL OF GALLOWAY *against* THE LAIRD OF ROLLWOOD and Others.

THE Earl of Galloway pursued an improbation against the Laird of Rollwood and others, and obtained certification against all writs not produced by the defenders. Three or four years afterwards there were some other writs produced by the defender, which were called for in the pursuer's summons, which writs he desired might be taken in yet, in respect that the certification was neither booked nor extracted *et sic res erat adhuc integra*; which the LORDS admitted.

Fol. Dic. v. 1. p. 453. Spottiswood, (IMPROBATION.) p. 166.

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The Lords refused to re-
pone a party

1667. *June 14.*

FORBES *against* BLAIR.

DR FORBES and his spouse, having recovered a decret against David Edgar, the said David did grant a disposition in favour of his mother, whereof the Doc-

tor and his spouse did intent improbation and reduction; and after long dependence, certification was granted and extracted; but the defender having given in a bill, craved to be reponed, pretending that the certification was granted in winter, when the defender being an aged woman, and attending one of her children being distracted, could not come in the time of a storm; and within five or six days after the certification was granted, she came and produced the disposition.

THE LORDS, before answer, whether they would repon against the certification, ordained them to dispute upon the reasons of reduction, viz. That the disposition was *inter conjunctas personas*, without an onerous cause, and that the condescence was not relevant, viz. That the disponer had granted bond for aliment and entertainment of him and the other children to his mother, and for terce; in respect the said pretences were only patched up to colour the said fraudulent disposition; and that the said disponer, *pendente lite* and after sentence, could not, in prejudice of the pursuer, give a bond, to be the ground of the said disposition; but if there were any ground of the said pretended debts, the defender should have recovered decret for the same; and though the debt were without question, the common debtor, contrary to the act of parliament, could not make a voluntary disposition, in prejudice of the pursuer's diligence, to gratify and prefer another creditor. It was *answered*, That, by the act of parliament, the reason (viz. That the right was granted without an onerous cause), is only probable *scripto vel juramento*, and that the disponer not being inhibited, the defender might lawfully *sibi vigilari*, and take a right for a just debt; and by the act of parliament, the diligence that disableth a debtor to give, and a creditor to take a voluntary right, is not a dependence or a decret, but inhibitions and hornings, which are so public, that the lieges may and ought to take notice of them.

THE LORDS were tender to repon against the certification, and yet they thought not good to take away the disposition upon the certification, seeing the writ was produced, and not suspected nor questioned to be false; and the defender did excuse and purge her negligence (as said is); and the disposition being in her favours, who was *sub potestate mariti*, and should be defended by him, having herself in law neither *velle* nor *nolle*, his negligence should not undo her; and therefore the LORDS having considered also the difficulties in the debate upon the reason, they reduced the disposition in manner after-mentioned, by reserving to the defender to pursue for the said pretended debts; and declared, that if she recovered decret, (the pursuer always being called, that there be no collusion,) the defender shall come *in pari passu* with the pursuer, and that the disposition shall stand to that effect only. Both the parties acquiesced in the decision.

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against a certification, although it was granted in winter, when the defender, being an aged woman, and attending one of her children who was distracted, could not appear to produce the writ called for, which writ was produced within a few days after the certification was granted. Yet an opportunity was given to the woman, to obtain by other means, what in justice belonged to her.