

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

insist in his reduction, as accords: and declared, that if the defender used diligence, in the reduction, they would take it to consideration, at the conclusion of the cause.

No 5.

*Fol. Dic. v. 1. p. 1. Stair, v. 1. p. 213.*

1666. January.

CAMPBELL against STIRLING.

ARCHIBALD CAMPBELL of Ottar, by contract of marriage, and infestment following thereupon; did provide Anna Stirling, his spouse, to the lands of Kin-naltie, by charter; carrying *cum molendinis et multuris*. At this time there is no miln upon the lands; but, during the marriage, he builds one; and, after his death, the relict possesseth both lands and miln: whereupon she and her present husband, and tenants, are pursued by this Ottar; for the duties of the miln.—It was alleged, *absolutor*, because the miln was built upon the husband's lands; which she liferented; being infest, *cum molendinis*; and *edificia* built by the heritor, *cedunt solo*; and consequently to the liferenter.—It was answered, That milns being *inter regalia*, are not transmitted, without an express disposition and infestment; and the general clause of a charter cannot do it.—*Replied*, That the general clause gives her good right, unless there had been a going miln, at the time of the infestment; in which case, it might have been questionable, unless the lands and miln had been erected into a barony; but where there was no miln; and a new miln is built; the miln accresceth to the liferenter, during the liferent; as well as if she had built it herself, after the husband's death:—which the LORDS found accordingly. Withall the LORDS declared, That if, after building the miln, her husband did thirle any other lands thereto, beside her liferent lands; that she is not to have the benefit of any such restriction.

No 6.

A miln built on an estate, during the incumbency of a liferenter, found to accresce to her.

*Gilmour, p. 130. No 180.*

1666. February 28.

Earl of LAUDERDALE against Viscount of OXFORD.

THE Earl of Lauderdale, being infest in the barony of Musselburgh; which is a part of the abbacy of Dunfermline; and was erected into a temporal lordship, in favour of the Lord Thirlston, thereafter Chancellor, the Lord Lauderdale's grandfather, in *anno 1587*; before the act of annexation, wherein the erection of Musselburgh, to the Lord Thirlston, is expressly excepted; thereafter, in *anno 1592*, the Queen was infest by the King, in liferent, in the abbacy of Dunfermline; with the consent of the Lord Thirlston, as to Musselburgh, and his resignation, to that effect. Shortly after, that same year, the King gave the Queen, an heritable, and irredeemable right, of the whole abbacy of Dunfermline; which was confirmed by a printed act of Parliament. The Queen lived till the year 1618: after which the King was served heir to his mother, in the

No 7.

The benefit of interruption of prescription, made by a donator during the usurpation, found to accresce to the true proprietor when restored.