

1670. June 8.

DOCTOR HAY *against* JAMIESON.

No 44.

A SINGULAR successor, though not infest, was allowed to produce his author's infestment, against which certification had been extracted, and to be reponed against the same, he, the singular successor, not having been called in the reduction and improbation.

Fol. Dic. v. 2. p. 350. Stair.

* * * This case in No 7. p. 6796, *voc* INDEFINITE INTROMISSION.

1670. July 15. Major BIGGAR *against* DAVID CUNNINGHAM of Dankeith.

No 45.

Certification against the reverser found not to militate against a proper wadsetter publicly infest.

MAJOR BIGGAR having right to the teinds of Wolmet from the Earl of Lauderdale, pursues David Cunningham of Dankeith, and Jean Douglas, relict of Wolmet, his spouse, for spuilzie of the teinds, restricted to wrongous intromission, and insists for the fifth of the rent. The defenders *allege*, Absolvitor, because they produce a valuation of the teinds of Wolmet, obtained at the instance of umquhile Patrick Edmonston of Wolmet, before the commission for valuation *in anno* 1636. The pursuer *answered*, That the defence ought to be repelled; *1mo*, Because Swinton standing then in the right of these teinds, had raised reduction and improbation of this decret of valuation, against James Edmonston, as heir to Wolmet, and thereupon had obtained a decret of certification, which is now produced; *2do*, By articles betwixt Dankeith and Major Biggar produced, Dankeith accounts for a greater duty than this valuation, and so passes therefrom, and homologates the Major's right; *3tio*, The decret of valuation never took effect, there never having been payment made conform thereto, but tacks accepted by the same defenders, and duties paid by them of a greater quantity. The defender *answered*, That the certification could have no effect against the defenders, because it was only obtained against Wolmet's apparent heir, who had only the right of reversion, the wadsetter who was proprietor publicly infest, and the said Jean Douglas liferenter by a public infestment, never being called, who do now produce the decret of valuation quarrelled; and as to the articles, they can import no homologation, because the article anent the teind bears only such a sum, without relating to the fifth of the rent, or to the price of the valued bolls. The pursuer *replied*, That the valuation having been obtained at the instance of Wolmet, and not of his wife, he might reduce the same by calling only Wolmet's heir, who had not only the reversion, but a back-tack, and he was obliged to call no other, especially seeing they had no right to the teinds. The defender *duplied*, That the heritor has undoubtedly interest in the valuation, though he had no right to the teind, because it liquidates the teind, and liberates the stock of any further, and so hath the liferenter for the liferent right, especially she