feftment, or such rights as may affect the lands wherein the pursuer libels he stands infeft, else his title will not be sustained, nor any certification granted; and the only proper way to pursue precedency is by a declarator.

REPLIED, though the pursuer and defenders' title were different things, yet he had good interest to pursue this improbation, because precedency which consequently arose from their patents, was the subject matter of the debate.

See the answers to this and the other replies in the information.

The Lords *(totis viribus obnitente præside)* found such writs as patents and the like were not the subject matter of a certification, because the pursuer's and defenders' rights were not *circa idem*. And my Lord Advocate reasoned against the pursuer's consequential interest, that if it were enough to sustain the admitting a certification, then, by the same rule, a man only served heir to his father might crave improbation or certification against writs granted by his goodsire or others, though he is not served heir to them, there being a good consequential interest. *2do*, A man infeft in a mill might upon that ground crave certification against the evidents of another mill near him, by which he finds himself hugely grieved and prejudged in the thirl or sucken of his mill. *3tio*, One man having a fair might by this account improve the writs of another heritor's fair, whereby he finds his customs diminished; and yet all thir are absurd.

*Advocates' MS. No.* 298, *folio* 124.

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1672. *January* 16.

A WOMAN in Aberdeen being at the point of death dispones some tenements of land and other heritage to . She, recovering of her sickness, raises reduction of the said disposition upon thir heads; as being *omnium bonorum, sine omni causa onerosa* done *in lecto ægritudinis;* and so as it might have been questioned by her heir, *multo magis* may it be done by herself, since the heir can have no greater power than the defunct had; that at most it was *donatio mortis causa*, which being in case of death, that not existing the donation falls; *magis enim vult se habere quam eum cui donat, et magis eum cui donat quam hæredem suum;* that it was *donatio inofficiosa*, the questioning whereof, though it was competent only to the children and other nearest of kin to the donatar, and that not for the whole, but only *in quantum* it was immoderate, and absorbed their legitim portions, yet *a fortiori* it seems most proper to the parties' self to reduce their gift to a mediocrity; that the *donatarii* were ungrate, in so far as they refused to repone her to her own place upon her reconvalescence; and so of the common law she might annul and revoke her gift, &c.

To all which it was ANSWERED, That this action was a novelty in our law; that this age, as barren of all charity and gratuitous deeds, knows no donations, and therefore allowed no revocation of deeds once consummated; that it was not *in lecto*, since she did not die of that sickness; though the heir will be reponed against a deed done by his predecessor *in lecto*, yet it was never so much as attempted by the party's self; that she could not pretend to the benefit of minority

*a paritate rationis,* seeing *privilegia* are *stricta juris* and cannot be extended *de casu in casum, &c.*

This was reasoned. But how far a donation may be revoked by the granter either *ob ingratitudinem, injurias ei a donatario factas, supervenientiam liberorum,* or the like, (for unless the granter do it his heirs could not do it,) by our law I cannot determine: nor yet if *quærela inofficiosa* would with us be sustained if intended against a donation by children, or the nearest of kin, in so far as it defrauds them of their legitim or agnate's part.

*Advocates' MS. No.* 300, *folio* 124.

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1672. *January* 16. Anent REDEEMABLE RIGHTS of LAND.

IT was questioned, a man having a wadset or hypothecation in lands redeemable upon such a sum, or a disposition of lands for relief of such particular cautionaries wherein he stands engaged for the disponer, as are therein named, without this clause, "and for relief of all other cautionaries wherein he either presently or thereafter happens to be bound for him," if other sums be owing him beside the sum contained in the wadset, or if he has paid other sums as cautioner, forby those enumerated in the bond of relief; whether he may be forced to renounce his wadset and disposition for relief, upon payment only of the sums in the wadset and the cautionaries mentioned in the bond of relief, or if *licet rem detinere et incumbere pignori* till the other personal debts for which he has no such real security be paid him. I imagine he could not detain the land with us, if the sums in his wadset or bond for relief were offered. But the Roman law makes a very rational distinction in this case, *qui debet pecuniam sub pignore, aliam vero summam eidem sine pignore nudo quippe chirographo,* the debtor cannot outloose the land or pledge, unless he pay both the sums; but this will not strike against another creditor of the debtor, or one who shall acquire his right *ex titulo singulari. Vide titulum C. Etiam ob chirographariam pecuniam pignus retineri posse. Vide supra, No.* 333, *Maisson* against *Rhind, January* 1672.

*Advocates' MS. No.* 301, *folio* 124.

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1672. *January* 16. Anent QUADRIENNIUM UTILE.

IT was questioned whether a man revoking a deed done by him in his minority *intra quadriennium utile,* must also raise his reduction of that deed, and end it before the elapsing of the said space, or if he may reduce these deeds at any time thereafter, if so be they were revoked within the twenty-fifth year? By our law, it seems that at least the reduction should be raised and called before the expiring of the said profitable years, but that it may be insisted on after: so Dury, 2*d February* 1630, *Hamilton* against *Sharp and others,* who cites *l. ult. C. Si major factus alienationem, &c.* for it. That a revocation should precede the