

said John was served heir to the said William his brother, and had homologated also the said bond by contract betwixt him and Tolquhon, whereby he disposes the lands comprised, of new again to Tolquhon, and ratifies the said apprising and grounds thereof; which contract, albeit when the said John was minor, was made with consent of his friends and lawyers most deliberately, the said Mr David Thoires being one of his lawyers; and, therefore, though it might be questioned upon minority, as to any prejudice or disadvantage the minor may pretend to have by the same, yet it will stand as an homologation of the said bond as to the truth of the same, unless it were offered to be improved by a positive qualification of falsehood.

No 122.

THE LORDS having considered the inconveniencies on either side, if certifications for not production of principals should be loosed, being the great surety of the people; and, on the other part, if they should be snares, and parties should pursue maliciously improbation, having *viis et modis* got the principal writs out of the register, or known they had miscarried; they found, in respect that Mr David Thoires having taken a right after the matter was litigious, by a charge and suspension of the minute, betwixt Tolquhon and the said John Forbes, the great grandchild, so that the said Mr David was in the same case as if the said John were pursuer, and was content to state himself in that case; and, in respect of the specialties of this cause, and adminicles and homologation foresaid, that therefore the said extract ought to satisfy the production, and the certification ought not to be extracted.

Dirleton, No 196. p. 85. & No 210. p. 96.

1675. June 30.

DUNMUIR *against* LUTFOOT.

No 123.

THE LORDS in an improbation found, (as they had done formerly in diverse cases), that an extract out of the books of an inferior court does not satisfy the production; the question being of a writ registrate in the books of the Canon-gate.

Reporter, *Newbyth.*

Fol Dic v. 1. p. 449. Dirleton, No 285. p. 138.

* * * Gosford reports the same case :

IN an improbation of a disposition, made by Thomas Dunmuir to his wife, of a tenement of land in the Canongate, certification being craved for not production of the principal disposition, it was *alleged*, That not only they produced an extract under the clerk's hands of the court of the Canongate, but likewise the register itself, bearing, that the principal was given up to the party to be kept by him, who gave in the same, so that there could be no appearance

No 123. of any forgery of the said disposition, albeit the principal had miscarried, the same being registered in the year 1645, and the tenement possessed by the party ever since. It was *answered*, That certification ought to be granted notwithstanding, because no extract out of any inferior court could satisfy the production, and the clerk ought to have kept the same for his warrant; so that unless it were proved, that the principal papers were taken away during the troubles, an extract could never be sustained to satisfy an improbation; especially in this case, where the register did bear the same to be given up to the party.—THE LORDS did grant certification, specially seeing the giving up to the party was written upon the margin by another hand than what the register itself was written with, bearing the registration.

Gosford, MS. No 766. p. 476.

* * See Stair's report of this case, No 37. p. 1755.

No 124. 1678. July 10. BALLANDALLOCH *against* DALVEY.

THE LORDS, on a bill, find this defence relevant to stop certification in an improbation of a bond, that the defender produced an extract out of the books of session, registrate when the principals were given back; and that the principal was thereafter seen and made use of at sundry trials, and produced in a process in the Sheriff-court of Elgin, which they found relevant to be proved by the procurators and members of court who had seen it and read it.

Fol. Dic. v. 1. p. 449. Fountainball, MS.

No 125. 1679. February 13. GORDON of Park *against* ARTHUR FORBES.

THE LORDS found an extract satisfied in an improbation, where it was proved the registers of warrants of that year were lost; and this, albeit it was an interdiction, and its executions, whereof the parties got the principal back.

Fol. Dic. v. 1. p. 449. Fountainball, MS.

No 126. 1681. January 11. MONRO *against* GORDON.

In a reduction and improbation, it is sufficient to stop certification of the writs called for, to allege,

SIR GEORGE MONRO having right to an apprising of the Lord Rae's estate, pursues reduction against Gordon of Gordonstoun, and other apprisers, who took terms to produce; and, after the terms run, and certification granted, do now allege no certification against the principal bonds, whereupon the apprising proceeded, because they are registered in the books of Council and Ses-