

day after Martinmas, and at the first of August : and that the arresters should be preferred according to their priority as to every running term, and not as to every particular due, as it was paid to the keeper, but for the whole term.

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1681. *February 17.* The TOWN of BRICHEN *against* ARBUTHNET.

THE TOWN of Brichen having obtained a gift, from King James, of the chaplainries belonging to the cathedral kirk of Brichen, for the use of their hospitals ; they did pursue reduction and declarator of their right to the chaplainry of Cadhame, and to the mill-lands of Cadhame, belonging to Findoury, as a part of that chaplainry, and against the Earl of Southesk, as pretending right to the said chaplainry ; in which summons there was also improbation. Whereupon they obtained certification, which was extracted ; and the cause now being discussed, “The Lords declared, that the pursuers had right to the chaplainries of Cadhame, and to the feu-duties of the mill-lands of Cadhame.

Whereupon Findoury ALLEGED, That it ought to be declared, That the certification should not be prejudicial to his right of property, but that he should be reponed against the same :—*1mo.* Because certifications in improbations contained in the same process with reductions and declarators, are always dependent till the reductions be discussed or passed from ; and therefore the Lords used to repon against certifications extracted, while the principal process is insisted in, and the plea not ended. *2do.* Certifications in improbationns joined with reductions or declarators, do not simply improve the writs called for, but only in order to the conclusion of reduction of these declarators ; and therefore though certification be extracted, it hinders not to make use of the same writs as to all other effects. So that the conclusion of this declarator being, by the Lords’ decret, determined to declare the town’s right to the feu-duty to the mill-lands of Cadhame, the certification cannot be made use of against Findoury’s property, who now produces a progress of 100 years to the property ; neither can the King’s gift make the town superior, but only give them the right to the feu-duties, the King remaining superior by the Act of Annexation ; and the Town can be in no better case than the lords of erection.

It was ANSWERED for Brichen, That certifications in improbation being the great security of the lieges to free them from the pretence of other rights, have been ever adhered to, though in absence ; much more where this defender appeared, and the certification was extracted several years ago. Nor is it competent now to debate the pursuer’s title, nor to question the certification extracted summarily, any ways but by reduction.

The Lords declared, That the certification should not prejudge Findoury of the right of property : in respect of his progress produced, against which nothing is objected ; and that the decret of the Lords hath only declared the right of the feu-duty to belong to the town.

*Vol. II, Page 861.*