

1680. *June 23.*The EARL OF QUEENSBERRY *against* The EARL OF ANNANDALE.

THE Earl of Queensberry pursues a reduction of the Earl of Annandale's rights of the barony of Torthorrel, and especially of the lands of ———, &c. a part of the barony, upon this reason, that, in *anno* 1619, the pursuer's author had obtained certification against the Lord Crichton, then heritor of these lands, then compearing. It was *answered*, That the Lord Crichton was not called in that process; and though he be mentioned, 'compearing by an advocate,' yet there is no interest produced for him, nor was he summoned to produce any writs; yea, though he had compeared, and produced an interest, and had disputed against the pursuer's title, as a sub-vassal and creditor might do, yet nothing being libelled requiring him to produce writs under certification, the certification against him was *ultra petita*, and so null.

Which the LORDS sustained, and would not sustain the certification, the heritor not being called to produce, though he be marked compearing.

*Fol. Dic. v. 1. p. 447. Stair, v. 2. p. 775.*

No 87.

A decree of certification found null, against a party, though marked at compearing, because there was nothing libelled, requiring him to produce his writs under certification.

1684. *March.* LORD SALINE'S CHILDREN *against* JEAN CALLENDAR.

A DECREET of the Lords of Session being called for, among other papers, in a reduction and improbation, and certification granted in the general, the LORDS upon application found, that certification should not run against such decreets that were *in publica custodia*, unless the defender had refused, as he did not, to condescend upon the date when the pursuer required it; and the case was favourable; and there was some complaint about the way and manner of extracting the decreet.

*Harcarse, (IMPROBATION and REDUCTION.) No 547. p. 152.*

No 88.

1694. *January 19.*JAMES HILL and LOGIE, *against* MARGARET GARDNER and Others.

IN the case of James Hill and Logie, against Margaret Gardner and other feuers of Hamilton of Parkly; the LORDS found a decreet of certification, declaring the writs void and null, imported no more but a certification in a single reduction; though it was *alleged*, That the improbation was libelled in the summons, as well as reduction; and that both in the English time, and some time after the restitution, (and this was in 1665,) the stile of improbation bore no more, except where actually the writ was improven, and then it bore also

No 89.

Decree of certification, declaring writs void and null, imports no more than a certification in a simple reduction, although improbation be libelled.

No 89.

that the Lords found it to be false and feigned. But the LORDS considered, that certifications in improbations, sweeping away men's rights in absence, and for not production, were not so favourable as to be extended and supplied, where they were not expressly contained in the decret, and therefore they reponed the parties, albeit now after 27 years.

*Fol. Dic. v. 1. p. 447. Fountainball, v. 1. p. 595.*

No 90.

1733. July 24. GARDEN of Bellamore *against* EARL of ABOYNE.

IT was *objected* against a decree of certification, following upon an action of reduction and improbation, *imo*, That there is no reason of reduction contained in the decree, or so much as libelled; *2do*, The decerniture, 'reduces, rescinds, and annuls,' &c. but wants the additional words necessary in an improbation, viz. 'and improves.'—THE LORDS found the certification to be only a certification in a common reduction, in respect it bore not the word 'improves.' See APPENDIX.

*Fol. Dic. v. 1. p. 447.*

1756. March 4.

EARL of BUCHAN *against* CAMPBELL of Shawfield, and other Real Creditors upon the Estate of Strathbrock.

No 91.

Certification cannot reach writings that never were in the hands of the defender.

BY the death of Sir William Stewart without issue male, the entailed estate of Strathbrock descended to Katharine Stewart his sister, wife to Henry Lord Cardross. This estate was burdened with many debts good against the entail; and when the creditors made a demand for payment, Lord Cardross, who had no interest but his *jus mariti*, took assignations in name of George Thomson his trustee; and in his name led an adjudication of the entailed estate, for debts extending to L. 30,000 Scots. This adjudication, being Lord Cardross's proper estate, descendible to his heirs of line, was parcelled out among his proper creditors; and by the conveyances granted to them, 'they are obliged upon payment to dispoise either to David, Master of Cardross, the rights granted to them, or to renounce and discharge the same in the option of the said David.' And by Thomson the trustee's conveyances in favour of the creditors, it is declared, 'That the said David, Master of Cardross, had not only right to the greatest part of the said adjudication and sums therein contained, but that he had right to redeem the conveyances to the creditors, which are granted in corroboration of Lord Cardross's debt.' And it is also declared, 'That the