

No 152. Albeit the LORDS will not grant action of improbation to him who libels nor produces no right but his own infeftment, to compel the defenders to produce the old infeftments granted by the King's predecessors to their predecessors, yet it is sufficient to compel them to produce the infeftments granted to them by the King's Majesty that now is; because albeit the LORDS allow not that he who is lately infeft shall rifle the defender's old charter chest, yet they will give action for production for as old evidents as he qualifies to pertain to himself or his predecessors, to whom he is heir.

Haddington, MS. No 1822. 1834. 1835. 1836. 1837. & 1839.

No 153.

1627. June 13. Sir JOHN HAMILTON *against* The TENANTS of BARGENY.

IN general improbations, no certification can be granted against any writs anterior to confirmations, original infeftments, or precepts of *clare constat*, granted by the pursuer himself, or his predecessors to whom he may succeed *jure sanguinis*; or yet granted by any of his authors, to whom he is singular successor; for in this case the LORDS put no difference between a singular successor and him of blood.

Fol. Dic. v. I. p. 452. Spottiswood, (IMPROBATION.) p. 164.

No 154.

1635. March 24. MRS KEITH of Benholm *against* HER HUSBAND'S HEIRS.

THERE was a bond granted by Mr Alexander Keith of Benholm to his wife, for infefting her in the lands of Brotherton and others, which bond was thereafter ratified by his heirs before his death; after which they sought to have the said ratification reduced, as if they had been circumvened in the giving of it, wherein having succumbed, they offered to improve the bond. *Alleged*, They could not be heard, because they had ratified the same. *Answered*, Notwithstanding, they might improve it, if it were false. THE LORDS found they could not improve it, in respect of their ratification, except they would improve the ratification first.

Fol. Dic. v. I. p. 452. Spottiswood, (IMPROBATION.) p. 170.

1703. January 28.

ROBERT GLENDINNING of Partoun *against* JOHN IRVING of Drumcoltran.

No 155.
Certification
against a
principal
right was re-
fused, in re-

IN the reduction and improbation at the instance of Robert Glendinning of Partoun against John Irving of Drumcoltran, for reducing a wadset right of the lands of Borland, granted by the pursuer's father to Mary Maxwell, from whom, and Robert Thomson of Kirkland her husband, when under distress for debt,

at the instance of Alexander Christy, Drumcoltran purchased the wadset, and paid the debt, upon a letter from the pursuer, desiring him earnestly to agree with Kirkland anent the Borland, which would be a kindness done to the pursuer. The defender having produced only an extract of the wadset out of the Stewart Court books of Kirkcudbright, the pursuer craved certification against the principal.

No 155.
spect the de-
fender was
desired, by a
letter from
the pursuer,
to purchase
that right.

Alleged for the defender; The extract cannot be quarrelled for not production of the principal, because the defender had acquired the right at the desire of the pursuer, and to do him a favour, whose letter was not only a homologation of the reality of the wadset, as if it had been disposed with his consent, but also a mandate to advance money for such a right *sui ipsius et tertii gratia*, the pursuer being debtor for the money; and as the exactest man could not doubt the verity of a debt acknowledged by the debtor, so it was *contra bonam fidem* to quarrel the same after the right thereto was acquired at his own desire.

Answered for the pursuer; The letter cannot hinder him to quarrel the right of wadset upon pretence of falshood, because *hoc non agebatur* thereby, that the writer should be bound for the validity of the right to be acquired; and men ought not to be ensnared by such general letters of friendship, which import no mandate, but only what lawyers call 'commendation.' For, as Voet Comment. in Pandect. Tit. Mandat. N. 1. observes, 'Mandatum dicitur a datione manus, &c. ac differt. a commendatione in eo, quod qui commendavit non obligetur; L. 12. § 12. L. 8. D. Mandati, Quali commendanti non absimilis videtur qui amicabilem tantum affectionem in negotio gerendo præstitit, L. 10. § 7. D. Eod.'

THE LORDS refused to allow the pursuer the benefit of certification against the principal wadset, and found the production satisfied by the extract, in respect of the letter recommending to the defender to purchase that right.

Fol. Dic. v. 1. p. 452. Forbes, p. 231.

1735. July 23. MARQUIS OF ANNANDALE *against* LORD HOPE.

CERTIFICATION was granted against a procuratory of resignation at the instance of the granter's heir, though the granter had acknowledged and homologated the same in after deeds; because this only proves the existence of the procuratory, but not the contents; and there might have been limitations or other clauses in favour of the granter and his heirs, which they were entitled to see; and the only method known in our law to force production is a certification of being held as false and forged, if not produced. It was *pleaded* for the defender, That a decree of certification is founded upon a presumption of falshood arising from their refusing to produce, and that in this case the presumption was sufficiently taken off by the acts of homologation. It was *pleaded* for the pursuer, That certification is not built upon any presumption of forgery, the con-

No 156.