

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.

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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-

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- No 156. trary of which is frequently acknowledged in the pursuer's own libel, being inconsistent with several other reasons of reduction commonly libelled; that our law appoints writs to be produced to every one who can show he has an interest in the production; and it appoints the production to be under the penalty of certification of being held as false or feigned; this is not discerning them false or feigned, but only that they shall be of no faith in judgment, more than if they were false or feigned.—See APPENDIX.

Fol. Dic. v. 1. p. 452.

S E C T. VIII.

Grounds of Reponing against a Decree of Certification.

1622. *January 31.* AUCHINTORY *against* BRUCE.

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THE LORDS found a decret of improbation irreducible, albeit given for not compearance, and that it was sought to be reduced within half a year, and that no adminicle of improbation was taken away because the writ itself was.

Fol. Dic. v. 1. p. 453. Kerse, MS. fol. 207.

1629. *January 15.*

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THE EARL OF GALLOWAY *against* THE LAIRD OF ROLLWOOD and Others.

THE Earl of Galloway pursued an improbation against the Laird of Rollwood and others, and obtained certification against all writs not produced by the defenders. Three or four years afterwards there were some other writs produced by the defender, which were called for in the pursuer's summons, which writs he desired might be taken in yet, in respect that the certification was neither booked nor extracted *et sic res erat adhuc integra*; which the LORDS admitted.

Fol. Dic. v. 1. p. 453. Spottiswood, (IMPROBATION.) p. 166.

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The Lords refused to re-
pone a party

1667. *June 14.*

FORBES *against* BLAIR.

DR FORBES and his spouse, having recovered a decret against David Edgar, the said David did grant a disposition in favour of his mother, whereof the Doc-