

## S E C T. VII.

Certification refused where the Pursuer, his Predecessors, or Authors have acknowledged the Writs called for.

1610. *February.* LORD SANQUHAR *against* His VASSALS.

## No 152.

In an impro-  
bation against  
vassals, cer-  
tification was  
refused a-  
gainst any  
writs not pro-  
duced, the  
vassals show-  
ing three sa-  
sines, and  
three pre-  
cepts, and  
the original  
charter.

The sasine  
on the ori-  
ginal charter  
could not be  
held to make  
no faith for  
non-produc-  
tion, the su-  
perior, by ha-  
ving given a  
precept of  
*clare constat*,  
having ad-  
mitted that  
the vassal had  
been infeft.

IN an action of improbation pursued by Robert Lord Sanquhar against his Vassals, the LORDS found, that no certification should be granted decerning any evidents not produced, to make no faith, where the vassal might show three sasines and three precepts voluntarily granted by the superior and his predecessors, together with the original charter, except the superior would offer to improve some of the precepts produced; and sicklike they found, That the sasine of the original charter could not be decerned to make no faith for not production; nor yet, in case the same were produced, could the superior be heard to improve the same; because by the giving of the precept of *clare constat*, he has granted that he was infefted and seased in the lands.

In an action of improbation pursued by Robert Lord Sanquhar *contra* his Vassals, the LORDS found no certification against writs not produced, where the vassal produced three sasines, and three precepts, with the original charter; but where the original charter was not produced, the LORDS granted the certification, decerning the same to make no faith for not production.

In the same cause, the LORDS found, that my Lord Sanquhar could not be heard to improve an original charter granted to Mr Robert Crichton, of the lands of Eliock and Euchan, and that because he had infeft Sir Robert Crichton of Cheny, as heir to his father, by a precept of *clare constat*, and therefore had confirmed an alienation of the same lands, made by the Laird Cluny to the Laird of Dalziell; and sicklike the LORDS would grant no certification for the writs not produced of the said lands, such as contracts, charters, or sasines, in respect he had produced sufficient instruments by the which he might brook the lands. Thereafter the Laird of Dalziell had insisted in an action for transuming of the said original charter, and the LORDS would admit Sanquhar to improve the same, in respect that Dalziell was user thereof, albeit they would not hear him to improve in the action of improbation.

In the said action of improbation pursued by my Lord Sanquhar *contra* the Town of Sanquhar, for production of all rights made to them or their predecessors by the King's Majesty, his mother, goodsir, or grandsir, it was found that the Town of Sanquhar could not be compelled to produce any rights made to them by the Queen's Majesty, King James V. or other Kings of Scotland, but only such writs and evidents as were made by the King's Majesty himself, be-

cause the Lord Sanquhar insisted in his pursuit upon an evident made to him by the King, proceeding upon his own resignation. No 152.

*Fol. Dic. v. 1. p. 452. Kerse, MS. fol. 203.*

\* \* \* Haddington reports this case :

1610. *Feb. 23.* HE who receives a vassal heir, and gives him a precept of *clare constat*, whereupon he being seased, and thereafter resigning in favour of a stranger, whom the said superior receives, and gives him infeftment upon the said resignation, the said superior may nevertheless pursue improbation of the infeftments of his vassals' author, notwithstanding the said precept and infeftment granted upon his vassals' resignation.

1610. *March 1.* HE who is pursued for production and improbation of his evidents, producing a precept of *clare constat*, given by the pursuer to himself, with a sasine following thereupon ; a precept of *clare constat* granted by the pursuer's father to the defender's father, with sasine following thereupon, and a precept of *clare constat*, with sasine following thereupon by the pursuer's guidfather to the defender's guidfather, and an original charter granted by the pursuer's grandsire to the defender's grandsire, was found to be a sufficient cause to stay the certification of the improbation upon the general clause of all other evidents of the said lands called for, unless some of the evidents produced were improved.

An original charter, with sasine following thereupon, to any man, together with his son's retour, and precept of *clare constat*, and sasine following thereupon, and that son's resignation accepted in favour of a stranger, with new infeftment granted thereupon, is sufficient to stay the certification of an improbation for the remanent writs called for, if none of the particular writs produced be improved.

The charter of Eliock being sought to be transumed, and the exception of improbation being proponed, the pursuer relying upon the precept of *clare constat*, given to Cluny, and the charter given to Dalziell by my Lord Sanquhar, upon Cluny's resignation, the LORDS found the exception relevant, because they would not admit a ratification in falsehood, unless it were express, and not *illative*.

Albeit a man called in an improbation produced the precept of *clare constat* granted by the pursuer to himself, and sasine following thereupon, together with two or three sasines alleged given by the pursuer's predecessors, and alleged that no certification can be given for not production of the precepts of sasine, in respect of the acts of Parliament, that sasines being produced, with forty years possession, it shall not be necessary to produce the precepts, warrants thereof; yet because there was no original infeftment produced, certification was granted for the writs not produced.

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,