

No 78.

1627. *February 13.* LADY BORTHWICK *against* Her VASSALS.

IN improbations pursued by liferenters, the certification is restricted to the pursuer's interest, *i. e.* albeit the writs called for be decerned to make no faith in that process, it is only meant in so far as may prejudice the liferenter, and will not benefit the heritor.

Fol. Dic. v. 1. p. 453. Spottiswood, (IMPROBATION.) p. 165.

* * * This case is also reported by Auchinleck.

IN an improbation pursued at the instance of a liferenter, the certification being general in the summons, is restricted by the Lords only for bruiking of the liferent.

Item, no certification was granted by the Lords at the instance of the Lady Borthwick for writs made by her husband, father, or goodsire, except she condescend, that her umquhile husband was heir to them, and not apparent heir *active et non passive*, as charged to enter heir.

Auchinleck, MS. p. 90.

* * * See Durie's report of this case, No 4. p. 25. See No 23. p. 6626.

No 79.

1624. *January 15.* HAMILTON *against* MATHIESON.

FOUND, That certification of improbation cannot be granted, except the conclusion of the summons bearing conclusion of improbation before the reasons, notwithstanding there be a reason of improbation contained in the summons.

Fol. Dic. v. 1. p. 447. Kerse, MS. fol. 207.

No 80.

1627. *February 15.* E. KINGHORN *against* GRANGE.

CERTIFICATION sustained upon conclusion of improbation without a reason of improbation.

Fol. Dic. v. 1. p. 447. Kerse, MS. fol. 208.

* * * Auchinleck mentions the following additional particulars relative to the same case :

1627. *July 27.*—IN improbations, certification cannot be granted for evidents not contained in the incident, but the same may lie over till the incident be concluded.

IN improbations, minors are not holden to give oaths upon their having of the evidents in their own hands, especially pupils, nor yet other minors of

greater age, except the Lords find them *doli capaces*, which the Lords reserve to their own consideration.

No 80.

Auchinleck, MS. p. 91.

1627. July 3. SIR THOMAS KELLY *against* ROBERT WINKAM.

No 81.

A HORNING called for to be improven, and being once produced, is taken up by the party, who refused to compear, but to suffer the certification to be granted; the LORDS ordain the horning to be produced.

Auchinleck, MS. p. 91.

1628. July 29. MR PATRICK MURRAY *against* LORD MADERTIE.

No 82.

In an improbation, a certification may be given against a writ, with declaration, that the same shall not be extended to the rights made to a particular person; so that it may stand in part, and bear no faith in part.

Auchinleck, MS. p. 95.

1628. December 12. EARL of MARR *against* His VASSALS.

No 83.

In improbations, where incident is sustained only for some of the writs called for, certification useth to be granted for all the rest not contained in the incident; but yet it useth not to be extracted before the event of the incident; until the conclusion whereof, any writs the defender produceth will be received, notwithstanding of the certification granted before.

Spottiswood, (IMPROBATION.) p. 167.

1662. January 3.

SIR ALEXANDER HOME of St Bathanes *against* ORR and PRINGLE.

No 84.

SIR ALEXANDER HOME of St Bathanes, having pursued improbation and reduction upon inhibition against John Orr and Walter Pringle; and insisted for all writs of the lands in question, made to the defenders' predecessors and authors of the lands in question; and the defender having alleged no process for writs made to his authors, unless they were called; and having condescended particularly on the authors to be called, the pursuer offered him to prove, that the authors were fully denuded in favours of the defender, and that the writs were in the defender's own hands. The defender *answered, non relevat,*

Certification was not granted against writs in favour of a defender's authors, tho' the writs were alleged to be in the defender's hands, and the authors were denuded.