

No 116. reduce these deeds, and could not be prejudged by such confessions made, when the contrary, in verity, is truly tried; and his officer's omission cannot prejudice the King; but yet he might be heard, notwithstanding of any such sinistrous affirmation made to the Prince, whereupon the writs proceeded. These reasons were sustained, and found relevant to reduce the retours and services; and it was declared, that the defender was not heir, neither could he be to these persons; and that he was not of blood to them, but declared, and it was found that the King was sole and only heir. And it being *alleged*, That the King had no interest to quarrel the retours, in respect of the writs foresaid, wherein he confessed the defender to be heir, and that his officers compearing at the service was a consent thereto; the exception was repell-ed, and the King's interest sustained, notwithstanding of these writs; and found that the King might now quarrel the same; and the wrongous information, and omission of the officers could not prejudice the King; and in this process, error being also concluded against the assizers, they were assoilzied from all error and punishment, because it was found, that they had just and probable cause to have served him heir, where the King's Advocate compeared the time of the service, and did not oppone thereto; but protested, that the proceeding therein should be for corroboration of the renunciation made in the King's favour, whereby, in effect, *tacite* he consented thereto, and which was found sufficient to liberate the assizers, together with the charter granted by the King, bearing that designation, whereby it appears, that the officers are hereby taxed for suggesting to the King that which was unwarrantable. In this cause, the treasurer-depute sat, and judged, reasoned, and voted, albeit he was pursuer. See KING. RETOUR.

Act. *Advocatus.*

Alt. *Mowat, Neilson, & Primrose.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 448. Durie, p. 682. & 683.

No 117. 1661. December 3. SIR ROBERT FARQUHAR *against* LYON of Muiesk.

SIR ROBERT FARQUHAR, pursuing a reduction of a disposition, against John Lyon of Muiesk, upon circumvention,

THE LORDS granted certification, unless not only the extract, but the principal disposition were produced, in respect they were registered at that time, when the principals were given back to the parties.

Stair, v. 1. p. 63.

No 118. 1665. January 20. LITTLE *against* EARL of NITHSDALE.

WRITS registered in the Court of Session being called for, a condescence of the dates of registration was sustained to bar certification, because that was

equivalent to saying, that the writs called for are already in the hands of the Clerks of Court, which, of course, must satisfy the production. **No 118.**

Fol. Dic. v. 1. p. 448. Stair.

*** This case is No 26. p. 5194.

1666. November 16.

BLACKWOOD *against* PURVES.

No 119.

CERTIFICATION was refused, for not production of a principal bond, an extract having been produced; because it was registered in the registers of Session, and the principal was lost by the disorder of the times.

Fol. Dic. v. 1. p. 448. Dirleton. Stair.

*** This case is No 5. p. 5167.

1668. December 17.

MR JOHN BAINE *against* BALFOUR.

No 120.

IN an improbation, pursued by Mr John Baine, writer, against Mr Robert Balfour of Denmiln, wherein certification was granted; it was *alleged*, That it could not be extracted, as to several lands condescended on, for any writs prior to those produced, because they had produced a full progress from the Abbots, or Lord of Lindores, before the pursuer's right. This allegiance was sustained, notwithstanding it was *answered*, That, if that progress were reduced, the pursuer would be forced to intent a new improbation, and so would be frustrated of the benefit of this action, which was intended to secure them from all further trouble. *2do*, It was *alleged*, That the certification could be extracted, as to such writs whereof they had produced extracts out of the register, either under the Clerk's hands of the Session, or the Clerk's of Stewartry of Falkland, or Sheriffdom of Fife, because of the confusion of the late troubles. This was repelled, as to such writs as were registered in private Court-books, but not as to those registered in the books of Session, for which they recommended to the Clerk Register to try, if the registers of those years, of which the extracts were produced, were lost with their warrants.

Extracts out of the registers of inferior courts cannot hinder certification in improbations.

Fol. Dic. v. 1. p. 448. Gosford, MS. No 63. p. 24.

1671. June 15.

DOCTOR HAY *against* MARJORY JAMESON.

IN an improbation of two bonds, pursued at the Doctor's instance against the relict and heir of Mr John Alexander, for stopping certification, there

No 121.
Found in conformity with the above.