

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

No 80.

*Auchinleck, MS. p. 91.*

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

No 81.

A HORNING called for to be improved, 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.*

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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.*

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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.*

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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.

No 84. though they were in his hands, because his authors being liable for warrantice, ought to be called to defend their own rights. The pursuer *answered*, The defender might intimate to them the plea. The defender *answered*, He was not obliged to intimate the plea; but the pursuers to call the authors. In this case, the summons was sustained for his authors' writs, in anno 1659; and now the pursuer insisting for the defender taking a second time to produce, the defender having a review of the said act and interlocutor,

"THE LORDS reponed the defender, and would not sustain the pursuit or act as to the authors' rights uncalled."

*Stair, v. 1. p. 73.*

1662. July 3. ALISON KELLO *against* PAXTON.

No 85.

In a process betwixt these parties, an exception having been proponed, the LORDS, before answer, ordained the proponer to produce the writs, with certification, that the defence should be held as not proponed. *In termino*, certification being craved, an incident was produced, because the writs were the propounders authors's writs and in their hands. It was *answered*, That the incident was not competent, there being no *litiscontestatio*. It was *answered*, That it was most competent wherever there was a certification, as in acts in reduction and improbation.

"THE LORDS found the meaning of such acts and certifications to be only, that the parties should produce their own writs, they would make use of, and such of their authors' writs as they had the time of the act, and that the other party might have their oath thereupon if they pleased, and therefore refused the incident."

*Stair, v. 1. p. 120.*

1669. November 9. LADY TOWY *against* CAPTAIN BARCLAY.

No 86.

Certification  
extracted  
found not to  
terminate a  
process of  
reduction.

THE Lady Towy having pursued improbation of a bond of an L. 100,000, alleged granted by the umquhile Laird of Towy to Captain Barclay, and of a disposition of the estate of Towy, alleged made by the tutor of Towy, the day after the Laird of Towy died, at the barns of Towy; which tutor fell heir-male to the Laird, who had only one daughter; the foresaid bond and disposition being produced judicially before by Captain Barclay, though not in this process, he refused now to produce the same, but suffered certification to be granted against it. The question having arisen whether any further process could be in the improbation, in respect that the principal writs were not produced, but copies bearing the tenor, date, and witnesses inserted,