

No 161. art's apprising against Con proceeded, and the not production of which did annul the apprising, and, in consequence, the whole rights following thereon; so that the Doctor's certification being most odious, for a sum of L. 1000, carrying the whole right of these lands, worth ten times more, seeing the Doctor's apprising is now near expired, the pursuer hath both law and favour on his part; and there is nothing more ordinary, than in improbations of lands holden of the King, to call only the King's immediate vassals, and if their subvassals should compear, and allege that all parties having interest are not called, it would be repelled; yet, if their superior be negligent, or collude, the subvassals may in the second instance compear and produce, and so preserve the subaltern rights; so here, Andrew Alexander having a subaltern right, depending upon George Stewart's right, though he had been absent and inscient of the certification, may very well, in the second instance, produce the bonds, and crave, that, as to his subaltern right, the certification may be reduced; much more when he did appear, and his right expressly reserved. It was *answered*, That Andrew Alexander neither now hath, nor had when he compeared in the certification, any title or interest in the lands of Artrochie; and so neither could nor can quarrel the certification, because all he pretends is, that he apprised the lands of Artrochie from Nielson, which apprising hath no effect, because George Stewart having apprised from Nielson before, albeit Andrew Alexander apprised during George Stewart's legal, yet his apprising becomes extinct, unless he had redeemed, or used an order or process within the legal; which being now expired, Andrew Alexander's interest is clearly extinct, and the certification is not only against George Stewart, but against Neilson also.

THE LORDS found, that Andrew Alexander had no title or interest, in respect George Stewart's legal was expired, and that he had used no order or diligence within the legal; and therefore found, that he could not quarrel the certification, and so had no occasion to determine, whether the falsehood of the executions, coming to knowledge after the certification, might be a ground to reduce the certification, upon the falsehood of the citations.

Stair, v. 2. p. 311.

No 162.

After a decree of certification had been extracted, the defender was reponed on production of the deed called for, in respect his advocate was sick at the time of the certification.

1675. February 17. BANNATYNE *against* The CREDITORS of JOHN ROME.

JOHN BANNATYNE having pursued a reduction, *ex capite inhibitionis*, of all rights granted by John Rome, after he was inhibited, one of the creditors produced a registrated bond and inhibition anterior to the pursuer's inhibition. The pursuer *replied*, That he had extracted a decret of certification upon the 10th day of December 1673, upon this process, containing both improbation and reduction, whereby this bond and inhibition are improved. It was *duplied*, That the certification was obtained, and taken out, when Mr Robert Dickson,

who was only for this defender, was sick of a disease, of which he died in January 1674, as is notour to the Lords.

No 162.

Whereupon the LORDS reponed the defender against the certification, providing the principal bond were produced out of the registers betwixt and Saturday next.

Fol. Dic. v. 1. p. 453. Stair, v. 2. p. 323.

1678. November 15.

EDMONDSTON against EDMONDSTON.

THE Laird of Duntreath having obtained certification against a bond of 7000 merks, granted by him to Mr John Edmondston; the said Mr John raises a reduction of the certification on this reason, that he is, and was the time of the process and certification, residenter in Ireland; and though the Lords are strict in reponing against certifications *ex intervallo*, as being the mean to secure the lieges against pleas and pretences; yet it hath never been extended with that rigour against those that reside out of the country, albeit, *de rigore*, they be liable to the Lords jurisdiction, *propter domicilium originis*; yea, the Lords reponed one Campbell against a certification obtained by Glenurchie against him, when he was a soldier in Ireland, though he was, not there *animo remanendi*. It was answered, That certifications are the lieges greatest securities; and that though this bond be now produced, it was never a delivered evident, but deposited in Mr John Spreul's hand, in order to a transaction; and, therefore, the Lords did not repon against the certification, till Mr John Spreul's oath was taken, which now is in process, declaring that the bonds, and some other writs, were put in his hand, to draw contracts upon, but were taken from him upon warrant from both parties; so that it appears it was not delivered *ab initio*, but hath unwarrantably come in Mr John Edmondston's hand, and was, after Mr John Spreul, in the hand of one Dobby in Ireland, arbiter betwixt the parties.

THE LORDS reponed against the certification but; upon further allegiance, that Mr John Edmondston, though residing in Ireland, compeared, and took terms to produce, they continued certification to the end of the cause; but allowed Duntreath to insist in his reason of reduction, upon depositions; and found it relevant, by Mr John Edmondston's oath, or writ, that it was deposited in Dobbie's hands, and by Dobbie's oath the terms of depositions.

Fol. Dic. v. 1. p. 453. Stair, v. 2. p. 646.

1695. December 24.

RORY MACKENZIE against THOMAS BOYD.

MERSINGTON reported Mr Rory Mackenzie of Dalvennan, Advocate, against Thomas Boyd of Pinkhill, for payment of a debt due to his sister, as a part of

No 163.
A party reponed against certification *de recenti*, being out of the country when pronounced.

No 164.
Notwithstanding of certification in an improbation, found competent to prove by the debtor's oath, that he had truly granted the bond in dispute.