duction before certification, authors must be called to produce, yet, in a declarator, there is no necessity thereof.

The Lords repelled both the defences, and sustained the process.

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1676. *July* 5. The LAIRD of GIGHT *against* The LORD ABOYN and PITTRICHIE.

THE Laird of Pittrichie, younger, having obtained a gift of recognition of the estate of Gight, and declared the same; and having also obtained a decreet of declarator, declaring a minute of agreement betwixt him and Gight null; because Gight, being required by instrument to fulfil, did not the same: and having taken several diets to fulfil, was found not to be in a capacity to fulfil; and therefore the minute was declared null, after several diets for two years' time, allowing Gight to fulfil. Whereupon Pittrichie pursued for maills and duties of the estate of Gight; and Gight raised a reduction of the declarator and nullity: and, during the dependence of that reduction, Pittrichie disponed the estate of Gight to the Earl of Aboyn, who was thereupon publicly infeft. In which reduction the Lords inclined to repone Gight, if he were found in a capacity yet to perform the minute; but declared, that the maills and duties of land should belong to Pittrichie, until performance were made. And now Gight, having made a further production, ALLEGED, That he ought to be reponed to fulfil the minute, and the decreet of declarator ought to be reduced; because, by the law of this and all other countries, decreets proceeding upon penal certifications, are always to be reponed against, *ex instrumentis de novo repertis*, which do fully purge delay and contumacy: and there was never any certification more penal than that whereupon this declarator proceeds; whereby threescore chalders of victual were lost, for not securing the teinds of that part thereof disponed to Pittrichie by the minute; which was the only ground whereupon the decreet proceeded, and now is satisfied, without any remaining objection, by a full progress of the right of these teinds, which was found in the hands of the sheriff-clerk of Aberdene; and which was offered to be proven by famous witnesses, who were employed to search for the said writs, and found them in the said clerk's hands.

It was ANSWERED for the defenders, That there is nothing can be more secure than a solemn decreet of a sovereign court, wherein parties have compeared and long terms granted and circumduced; especially as to the Earl of Aboyn, who is now publicly infeft, and is a singular successor, resting upon the security of that solemn decreet. *2do.* Albeit now, the right of the teinds be cleared, yet the right of property of the lands provided to Pittrichie by the minute, are neither secure by a public infeftment, holden of the king, conform to the minute, nor can he be secure by what is offered or produced for the lands provided to Pittrichie; being an old wadset by the Lairds of Gight, his predecessors, and holden of Gight, he is neither secured in the right of reversion, nor in the superiority: for any thing produced is a charter from certain apprisers of the estate of Gight, to the Laird of Fredret, *à se*, not confirmed, and a charter

from Fredret to Gight, likewise *à se*, not confirmed; and so both null: and Fredret's right to Gight is burdened with his relief of Gight's cautionary.

The pursuer REPLIED, That his reason of reduction stands most relevant; and there is no respect to be had to Aboyn's right; because it is purchased during the dependence of the reduction *in re litigiosa:* And, as for the security now offered, it is abundantly sufficient:—1*mo*. Because the lands provided to Pittrichie have been bruiked by him and his predecessors fourscore years, by a wadset; and so the property is fully secured by prescription. *2do*. The infeftment upon the recognition holden of the king, carries the whole right of these lands; and, if the recognition should be quarrelled, the wadset would stand firm; and the superiority and reversion, belonging to Gight, is conveyed by the expired apprising, whereby the apprisers were infeft by the king: And their charter to Fredret, and Fredret's to Gight, having both infeftments, and to be holden of the king, with a charter by Gight to Pittrichie, or Aboyn, likewise to be holden of the king, may be all confirmed by one charter of confirmation; which may be presently passed in Exchequer.

The Lords found the oath and allegeance for Gight, relevant to repone him against the certification of the declarator of nullity; but adhered to their former interlocutor as to the maills and duties, before performance of the minute, that they belong to Pittrichie by virtue of his infeftment or recognition: and reponed him only on these terms,—disponing with absolute warrandice, and giving real warrandice for relief of Fredret's cautionary.

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1676. *July* 5. SAMUEL CHIESLY *against* EDGAR of WEDDERLY.

SAMUEL Chiesly having charged Edgar of Wedderly for payment of 800 merks, for which he became obliged for his brother, as apprentice-fee; he suspended, and raised reduction upon minority and lesion.

It was ANSWERED, No lesion; because the pursuer hath a natural obligation to aliment his brother-german. *2do*. He represents his father in a considerable estate, who was obliged to aliment his children; and which the Lords have often extended to heirs having a considerable estate, during the minority of the children, so long as they were unable to entertain themselves, and accordingly, modified 50 merks of aliment to the same apprentice: And, seeing his apprentice-fee hath liberated his brother of five years' aliment when he was older, the same ought to be sustained.

The Lords modified 100 merks yearly, for the five years' apprenticeship; but would allow no annualrent thereof, although in the indenture; but, in place of the same, 50 merks of expenses.

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1676. *July* 8. FRANCIS MONTGOMERY *against* The TENANTS of BAGLILLIE.

MR Francis Montgomery having pursued a number of tenants for maills and