

dangerous consequence to allow such improbations at the King's instance, for he may at that rate force the production of all his vassal's charter chests. *2do*, That this action had not the privilege of the King's causes (there being a donatar) and yet it was assumed.

No 75.

Fol. Dic. v. 1. p. 446. Fountainhall, v. 1. p. 814.

S E C T. III.

Certification, its Nature, Stile, and Effects.

1671. *January 10.* JOHNSTON *against* LAIRD of CASTLEMILK.

No 76.

IN an action of improbation pursued by Mr John Johnston against the Laird of Castlemilk, the LORDS, after production of incident diligence by the defender, granted certification for the rest of the writs not contained in the incident.

January 22.—IN the same cause, the said Mr John offered to improve the execution of the incident, both *cum processu*; which having past to interlocutor, the LORDS found, that if Mr John proponed improbation by way of exception, he behoved to confess the whole libel, otherwise they would reserve him his improbation by way of action.

Kerse, MS. fol. 204.

. Haddington reports the same case.

MR JOHN JOHNSTON pursued the Laids of Castlemilk, elder and younger, for improbation of their evidents of Castlemilk, made to them and their predecessors, by his Majesty, or by his Majesty's mother, or by King James the Fifth, King James the Fourth, or by the Duke of Lennox, or his father or mother, Earl of Lennox, or John Earl of Lennox. In the which cause, the defenders raised an incident against my Lords of Blantyre, Kilsyth, and diverse others, for certain evidents of the said lands, made to the defenders and their predecessors, by the Earls of Lennox. The pursuer urged certification for the rest of the writs called for, and neither contained in the incident, nor produced. It was *answered*, That until the incident were discussed, the production could not be concluded, and before that time, he would satisfy the production for the rest, or suffer the certification then to pass. THE LORDS

No 76.

found, That the certification should be presently granted for all the particular evidents called for by the principal summons, and not contained in the incident. Thereafter, the pursuer *alleged*, That no process could be granted in the incident, because the necessary parties were not called, to wit, the said Mr John Johnston, and the advocate, who were pursuers in the principal cause; and in so far as they were indorsed upon, as summoned, the said Mr John offered to improve that execution. The pursuer of the incident *alleged*, That the improbation of the execution of his incident could not be received by way of exception, but behoved to be pursued by way of action. THE LORDS found, That because Mr John Johnston was pursuer of the principal cause, and delayed himself by proponing the improbation of the execution of the incident, that they would admit his exception of improbation as peremptory in the incident; wherein if he succeeded, the incident should be held as proved against him.

Haddington, MS. No 2074.

1611. February 20.

MURRAY against LADY ———.

No 77.

IN an action pursued by John Murray *contra* Lady ———, the LORDS admitted an exception against the production to stay the certification, viz. That the writs were in the pursuer's hands; and immediately thereafter, the LORDS found, That the defenders ought to propone their defences against the reasons of the summons, in respect the charter and sasine were produced, notwithstanding that the pursuer would not grant the production satisfied for the rest; and thereafter, an exception being found relevant against the reasons of the summons, the Lords assigned a day, both for proving the exception *contra productionem*, and for proving the exception against the reason.

Kerse, MS. fol. 204.

. Haddington reports the same case..

1611. Feb. 19.

JOHN MURRAY pursued the Lady Lamington, and the Laird her father, and the young Laird her eldest son, John Maxwell her second son, James Donaldson, Colquort, and divers others, for production of their infeftments, procuratories, and instruments of resignation, tacks of teinds, and other securities, to be reduced and improven. The defenders produced as incident for the procuratory and instrument of resignation against the Lord Hereis, heir to the alleged tutor of the said John Maxwell, and divers others. It was *alleged*, That the incident should not be sustained, because it was for the defender's own evidents. It was *answered*, That he being minor when his father died, and his writs coming in the Lord Herries's hand, who was his tutor, from whom he had not recovered them, he might justly use his incident