

S E C T. IV.

Who must satisfy Production.—What terms allowed for Production.
What incumbent on the Defender.—What his Privileges.

No 93.

A defender in a reduction and improbation, produced the writs called for. Found, that he could not compare in the improbation, and allow the reduction to pass in absence; but that he must either compare *in toto*, or be absent *in toto*.

1605. June 21. WARDLAW against CURRIEHILL.

MR ALEXANDER GUTHRIE and Wardlaw, daughter of umquhile Wardlaw of Warriston, pursued Wardlaw of Curriehill for reduction and improbation of certain writs, whereby Curriehill pretended right to the lands of Warriston.—Curriehill compeared, and produced, and declared that he would defend against the improbation, and would not compare at this time in the reduction.—It was *alleged*, That he could not be comparing and not comparing in one cause, being defender; neither could the Lords reduce evidents produced for non-production; but seeing they were produced, the Lords behoved to consider the relevancy of the reason, and discuss the same.—It was *answered*, That the eiking of the reason of improbation to the summons of reduction, could not pre-judge the defenders farther than if they were in several summonses.—THE LORDS repelled the allegiance, and found, That the defender producing could not divide the effect of his production by a declaration; but the production made, behoved to satisfy both the conclusions of the summons; and could not both be produced, and be reduced for non-production. THE LORDS found, That they would either hold the defender compearing in the hail cause, or absent in the hail cause; and would either have him to satisfy the production in the hail, or to be absent in the hail.

Fol. Dic. v. I. p. 453. Haddington, MS. v. I. No 839.

1607. February 25. CALDERWOOD against LEY.

No 94.

AN exception being made against an action of improbation, that the pursuer was decerned by a decree-arbitral to ratify the infestment controverted, the exception was repelled against the production.

Fol. Dic. v. I. p. 447. Haddington.

* * * This case is No 18. p. 5037.