

No 142.

*** Stair reports this case.

THE EARL of Queensberry pursuing reduction and improbation against his vassals, craves certification; M'Gauchan, one of the vassals, *alleges* no certification, because he has produced sufficiently to exclude the pursuer, having produced a progress of 40 years. The pursuer *answered, non relevat*, seeing his titles produced are anterior to the forty years; so that the defence thereupon will not be sufficient, unless possession thereby, and prescription be alleged, which must abide probation, and is not competent in the production, but only in the discussing of the reasons.

THE LORDS repelled the defence *hec loco*, and reserved the same till the discussing of the reasons.

Stair, v. 2. p. 50.

1673. *January*BANNATYNE *against* ROME and Others.

No 143.

BANNATYNE having pursued reduction and improbation against Rome, and and craving certification, the defender *alleged* no certification, because he had produced sufficiently to exclude the pursuer's title, by rights anterior to his. It was *answered*, that albeit the allegiance be relevant in a reduction, yet in an improbation where a reason of falsehood is alleged against all the writs, it is not sufficient.

THE LORDS sustained the defence, the defender proponing the same *peremptorie*, so that if the pursuer should improve these writs, there could be no further terms for the defender to produce any other writs.

Fol. Dic. v. 1. p. 451. Stair, v. 2. 159.

1680. *July 13.*LAIRD OF STROWAN *against* MARQUIS OF ATHOLL.

No 144.
Found, that the defender's father's infeftment being anterior to the pursuer's infeftment excluded certification, though the defender did not instruct he was heir to his father.

ROBERTSON of Strowan pursues the Marquis of Atholl for reduction and improbation of a right of the kirk-town of Strowan and others, and craves certification, unless the Marquis would take terms to produce; who *alleged* no process, because he produced his father's infeftment, anterior to the pursuer's infeftment, containing the lands in question *per expressum*, both in his own and his father's infeftment; whereas Strowan's charter hath a particular enumeration of the lands comprehended in his barony, without the least mention of the lands in question, nor are they mentioned in any of his predecessor's rights. The pursuer replied, That these lands are part and pertinent of the barony of Strowan, and an enumeration is not exclusive of other parts; and

as to the defender's father's charter, it cannot exclude the pursuit, unless the defender were infeft, at least served heir to his father. *2do*, The pursuer produces his father and goodsire's infeftments, anterior to the defenders. The defender *duplicated*, That the common stile in all improbations and reductions, is a production of all rights made to the defender and his predecessors, to whom he may succeed *jure sanguinis*, and therefore the defender produceth sufficiently, viz. his father's charter, to whom he may succeed *jure sanguinis*, which is anterior to, and exclusive of the pursuer's infeftment. Neither is his reply relevant to force the defender to produce upon the production of his father or goodsire's infeftments, unless he were actually served heir to them; for his being apparent heir is no active title, though the defenders being apparent heir, is sufficient to exclude any farther production.

No 144.

THE LORDS found the defender's father's infeftment being anterior to the pursuer's infeftment, did exclude certification, though the defender did not instruct himself heir to his father; but found the pursuer could not urge certification upon any of his predecessor's infeftments, unless he were served heir to them; and that he ought instantly to verify the same, being his active title, at least before any production; and would not sustain it to be proved that he was heir, by reply; and therefore assoilzied the defender *ab hac instantia*, upon the priority of his father's right to the pursuer's title produced.

Fol. Dic. v. 1. p. 451. Stair, v. 2. p. 784.

. See the sequel of this case, No 27. p. 5195, *voce* GROUNDS AND WARRANTS.

1682. February.

ROBERT DEANS *against* OSWALD.

No 145.

IN a reduction and improbation at the instance of a posterior against a prior appriser, the defender having produced his apprising, the pursuer craved certification *contra non producta*.

Alleged for the defender, No certification can be granted *contra non producta*, in respect the defender hath produced sufficiently to exclude the pursuer's title, viz a prior though unexpired apprising; just as a prior infeftment would the title of a posterior, although it might be more doubtful if his apprising could be obtruded against a postesior right of the lands by disposition and infeftment.

THE LORDS found there could be no certification *contra non producta*; but that they might reason on the production.

Harcarse, (IMPROBATION AND REDUCTION.) No 525. p. 145.

1696. February 7.

SIR DONALD BAIN of Tulloch *against* SIR ROBERT GORDON of Gordonston.

No 146.

IN a process between Sir Donald Bain of Tulloch and Sir Robert Gordon of Gordonston, for reduction and improbation of his rights on the lands of Ar-