

\* \* \* Stair reports the same case :

1667. December 7.

No 141.

THE Earl of Lauderdale and John Wauchop, macer, pursue a reduction and improbation of the rights of the lands of Hill, against Major Biggar, and crave certification *contra non producta*. The defender *alleged* no certification, because he had produced sufficient rights to exclude the pursuer's title, viz. in-fertments long prior to the pursuer's right. It was *answered*, That this could not stop the certification, unless the defender would declare he would make use of no other rights in this instance, otherwise the pursuers behoved to dispute with him upon every single writ he produced, and behoved to dispute the reasons of reduction with him before the production were closed. The pursuer answered that his allegiance, as it is proponed, was always sustained without declaring that he would make use of no more.

THE LORDS found the defences (as proponed) relevant, and ordained the Ordinary to hear the parties debate upon the rights produced, and if these should not prove sufficient, the LORDS thought that the defender might be forced at the next time to produce all he would make use of in this cause, that so the pursuers were not delayed upon disputing upon every single writ.

*Fol. Dic. v. I. p. 451. Stair, v. I. p. 491.*

1672. January 19. EARL OF QUEENSBERRY *against* M'GACHAN.

No 142.

IN an improbation pursued by Queensberry, it was *alleged* for one of the vassals, That no certification could be granted for non-production of any of the evidents of his lands, because he had produced a charter and sasine, and offered to prove, that his authors and predecessors had been in peaceable possession without interruption above 40 years. It was *replied*, That the allegiance ought to be repelled, because the pursuer's rights produced were more ancient than those produced for the defenders, which could not exclude his interest to crave certification against all writs posterior thereto, which were not produced.

THE LORDS did repel the defence *hoc loco*, and reserved the same to be proponed in the reduction, where it was only competent; and found, that no allegiance was competent against the certification but such as was found so, upon writs produced, which did elide the pursuer's interest.

*Fol. Dic. v. I. p. 451. Gosford MS. No 444. p. 232.*

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