No 51.
pursuer's predecessor died infeft; tho' it would not be sufficient, if, after production, the pursuer were going on with his reasons of reduction.

alleged, That the pursuer's right was prescribed, his predecessors infeftment being old, and no diligence done by the space of 40 years; and for any alleged interruption, it being only a summons raised in *anno* 1630, and the executions thereof not stamped, conform to the act 74. Parliament King 6. James 5;—it was *replied*, That the executions being subscribed by the messenger, needed no stamp, the act being only made when subscriptions were not in use; and as to summonses which might be executed by any Sheriff in that part, that act of Parliament was in desuetude. This allegeance was likewise repelled, in respect of the reply. *3tio*, It was *alleged*, That the execution produced was in a schedule apart, and not indorsed upon the summons; neither did they bear the pursuer's predecessors names, at whose instance they were raised; and that the persons cited were only summoned conform to the within written letters, which might be applicable to any kind of summons whatsoever; and the messenger and witnesses being all dead, it were of a dangerous preparative that upon such citations which might be made up, the rights of lands should be taken away, where the defenders and their authors had been 100 years in peaceable possession. ——THE LORDS, before answer, did ordain the pursuer to condescend what way he could instruct the verity of that execution produced, which they found to be necessary in this case.

Fol. Dic. v. 1. *p.* 444. *Gosford, MS. No* 402. *p.* 202.

1673. *July* 24. SCHAW *against* WATT.

No 52.
An adjudication against an apparent heir upon his own bond, purchased in by him, not sufficient title, to improbate deeds affecting the lands, granted by his predecessors, unless their infeftments be produced.

THE Laird of Cessnock having adjudged from Sornbeg all right that might be competent to him of the lands of Foulsheils, he assigns the adjudication to this Sornbeg, who being thereupon infeft, pursues improbation and reduction of all rights granted by Sornbeg's father, goodsir, or grandsir, of the lands of Foulsheils to Watt or his authors, whereupon he craved certification.—The defender *alleged* no certification, because he produced an infeftment of Foulsheils anterior to the pursuer's infeftment; and the pursuer had no interest to crave certification of writs granted by his father, goodsir, and grandsir, unless he produce their infeftments; otherwise any man, upon an adjudication, which passeth of course, of all lands the adjudger pleaseth to insert, assigning the same to the apparent heir, against whom the adjudication was deduced, may compel all the heritors of these lands to produce to him their rights made by any of his predecessors, without instructing that any of his predecessors were ever infeft.—It was *answered*, That the pursuer, by the adjudication, is in the same condition as to this process, as if he were served and retoured heir to his predecessors, in which case he might quarrel all the writs pretended to be made by his predecessors as false.—It was *replied*, That albeit an heir served hath interest to improve an obligement or personal right, because he may be therewith distressed;

yet he cannot quarrel a real right by infeftment; unless he produce his predecessors infeftment, and his own infeftment as heir to him. No 52.

THE LORDS would admit no certification till the predecessors infeftments were produced.

Fol. Dic. v. 1. p. 443. Stair, v. 2. b. 221.

1675. *November* 17. MURRAY *against* DUNDAS.

No 53.
A pursuer insisted in a reduction of all rights belonging to the defender, relating to certain land, alleged to be part of the pursuer's property. Found, that the pursuer must prove this averment, before the defender can be obliged to produce.

When lands are pretended to be thirled to a mill, the proprietor has good interest to pursue an improbation against the heritor of the mill, of all rights and writs, bearing express constitution of the servitude.

PATRICK MURRAY of Deuchar, as being infeft in the lands and barony of Temple, pursues reduction and improbation against Sir James Dundas of Arniston, of all his right of the lands of Halkerton, Castleton, Esperton, Hoodspeth, and Hobourn.—It was *alleged* for Arniston, no certification, because the pursuer produces no title; for his infeftment produced doth contain none of the lands libelled, but only Esperton, for which the defender craves a term to produce.—The pursuer *answered*, That he offered him to prove that the remanent lands were part and pertinent of the lands contained in his infeftment.—It was *replied*, That the said lands cannot be claimed as part and pertinent, because the defender produces his infeftments thereof, *per expressum*, and offers to prove that he hath been 40 years in possession by virtue thereof, and so they are distinct tenements, severally kend and known, and therefore the pursuer cannot be admitted to prove them part and pertinent of his lands.—The pursuer *duplied*, That it was sufficient for him to prove the lands part and pertinent, because most baronies, and many other tenements, had one common name, and had not the particular lands comprehended and enumerated; neither can the defender's possession 40 years secure him against improbation, because in the act of prescription 'falsehood is expressly excepted,' and therefore the defender must produce, to the effect the pursuer may improve the writs as false, and then the defender's naked possession without a title, can have no effect. 2*do*, The pursuer hath another ground to enforce the defender to produce, viz. That by his infeftment produced he hath right to the miln of Temple; and if the defender will produce his rights, it will appear thereby that they are burdened with a thirlage to the miln of Temple.

THE LORDS found, That for such lands as the pursuer was not expressly infeft in, albeit the defender produced no right thereof, yet before he were obliged to take terms to produce or suffer certification, the pursuer must first prove the lands in question to be part and pertinent of the lands contained in his infeftment, conform to his answer; but found the reply relevant to elide the same, 'that the defender is specially infeft therein, and 40 years in possession 'thereof,' and that thereby they are distinct tenements, and not part and pertinent; and that though there were interruption, yet the allegeance of part and pertinent is thereby excluded; and though the pursuer may proceed to declare his right of property, yet he cannot force the defender to produce his rights by