

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