

1680. *June 23.*The EARL OF QUEENSBERRY *against* The EARL OF ANNANDALE.

THE Earl of Queensberry pursues a reduction of the Earl of Annandale's rights of the barony of Torthorrel, and especially of the lands of ———, &c. a part of the barony, upon this reason, that, in *anno* 1619, the pursuer's author had obtained certification against the Lord Crichton, then heritor of these lands, then compearing. It was *answered*, That the Lord Crichton was not called in that process; and though he be mentioned, 'compearing by an advocate,' yet there is no interest produced for him, nor was he summoned to produce any writs; yea, though he had compeared, and produced an interest, and had disputed against the pursuer's title, as a sub-vassal and creditor might do, yet nothing being libelled requiring him to produce writs under certification, the certification against him was *ultra petita*, and so null.

Which the LORDS sustained, and would not sustain the certification, the heritor not being called to produce, though he be marked compearing.

*Fol. Dic. v. 1. p. 447. Stair, v. 2. p. 775.*

No 87.

A decree of certification found null, against a party, though marked at compearing, because there was nothing libelled, requiring him to produce his writs under certification.

1684. *March.* LORD SALINE'S CHILDREN *against* JEAN CALLENDAR.

A DECREET of the Lords of Session being called for, among other papers, in a reduction and improbation, and certification granted in the general, the LORDS upon application found, that certification should not run against such decreets that were *in publica custodia*, unless the defender had refused, as he did not, to condescend upon the date when the pursuer required it; and the case was favourable; and there was some complaint about the way and manner of extracting the decreet.

*Harcarse, (IMPROBATION and REDUCTION.) No 547. p. 152.*

No 88.

1694. *January 19.*JAMES HILL and LOGIE, *against* MARGARET GARDNER and Others.

IN the case of James Hill and Logie, against Margaret Gardner and other feuers of Hamilton of Parkly; the LORDS found a decreet of certification, declaring the writs void and null, imported no more but a certification in a single reduction; though it was *alleged*, That the improbation was libelled in the summons, as well as reduction; and that both in the English time, and some time after the restitution, (and this was in 1665,) the stile of improbation bore no more, except where actually the writ was improven, and then it bore also

No 89.

Decree of certification, declaring writs void and null, imports no more than a certification in a simple reduction, although improbation be libelled.