

No 133.

the inconvenience on both sides, and what had been the constant form in this case, determined as follows, viz. That if they be writs registered in the books of Session, a condescence on the dates of their registration is sufficient to burden the pursuer with the search; but it is otherwise in writs registrated in inferior courts; therefore the LORDS in the present case found, That certification ought to pass against the last if not produced; but in regard of the importance of the affair, and greatness of the danger, they gave the defender a diligence to cite the clerks for recovery of the principals; and because they were dispersed through many judicatories, they assigned a long day to search them out.

*Fol. Dic. v. 1. p. 450. Fountainball.*

\*.\* This case is No 10. p. 5172.

No 134.

A defender in an improbation having given in a condescence of writs in *publica custodia*, after extracting the act for the first term, but before extracting an act for the second, the Lords allowed it to be received to stop certification.

1713. November 24.

THEODORE MORISON of Bognie *against* The EARL of LEVEN.

IN the reduction and improbation at the instance of Bognie against the Earl of Leven, the LORDS allowed a condescence of writs in *publica custodia*, offered by the defender, after extracting of an act for the first term, before an act for the second term was extracted, to be received to stop certification; because, so long as any term for production was current, the pursuer had time to search whether the writs called for were so registrated, and to get a warrant for transmitting the principals, if he had use for them; and if the writs in the condescence were not upon record, he might extract his act and crave certification.

*Fol. Dic. v. 1. p. 448. Forbes, MS. p. 5.*

1715. July 28.

SIR LAWRENCE MERCER of ALDIE, and M<sup>rs</sup> HELEN MERCER his Lady,  
Supplicants.

No 135.

THERE being a reduction and improbation raised at the instance of Sir James Elphingston, against the creditors of Dumfermline, and certification ready to be extracted against Sir Lawrence Mercer, one of the said creditors, for not production of a charter following upon his adjudication, and a decret of mails and duties thereon, upon Sir Lawrence's application and offer to show to the clerk of the process the book of the Chancery, where the said decret of mails and duties is registrated; and there being no answers given in for Sir James Elphingston,

THE LORDS held the said charter and decret as produced; unless the pursuer would insist on some special reasons of reduction and improbation.

No 135.

For Aldie, *Massie*.Clerk, *Robertson*.*Bruce, v. 1. No 132. p. 175.*

## S E C T. VI.

Title to Exclude.—When Proponable.—What Title Sufficient.—  
What the Effect.

1610. December 11. HAY against GORDON.

No 136.

IN an action of reduction pursued by William Hay of Urie against Mr John Gordon of Cramond to hear and see him restored against the decret of improbation, whereby a tack set by umquhile Mr Archibald Keith, parson of Cramond, to umquhile John Hay of Urie, father to the said William, was decerned to make no faith for not production, because it was given for not compearance; and if he had compeared, he would have alleged that the certification could not be granted, in respect the said Mr John had ratified and approved the said tack himself;—the LORDS found the reason of reduction relevant, except the defender would condescend upon some mean of improbation taken from him since his decret; and thereafter it was alleged, that one of the witnesses inserted in the ratification was deceased; which the LORDS found relevant, notwithstanding of the said reason and answer made thereto, that the defender could allege nothing taken from him concerning the improbation of the said tack, which was only called for *in prima instantia*, and not the ratification.

*Kerse, MS. fol. 204.*

\*.\* Haddington reports the same case.

1610. December 8.—MR JOHN GORDON, parson of Cramond, having obtained a decret of improbation against the Laird of Urie, decerning all his tacks of the teinds of that parochin to make no faith for not production, the Laird of Urie pursued for reduction of that decret of improbation, *alleging*, if he had compeared, he would have alleged, that the pursuer could not have improven that tack, because he had made express ratification thereof; which ratification being granted to Urie's father, was lately come to this Urie's hands. It was *excepted* against this reduction, That the reason was not relevant, because improbation being devised to impugn and eschew falsehood, the