

1622. February 26. E. of KINGHORN against L. of INCHSTUIR.

IN an action of improbation pursued by the E. of Kinghorn, as heritably infest in the lands of Inchstuir, against the L. of Inchstuir, for improbation of the evidents made to him, or any of his predecessors, the defender compearing, produced a right anterior to the right which the pursuer produced for his title in that process, and *alleged*, That he could not be compelled to produce any more, seeing thereby he elided the pursuer's right; which being found sufficient by the LORDS;—The pursuer *replied*, That his predecessors, to whom he succeeded, had anterior rights before the defender's right produced, and condescended upon the eldest right, which any of his predecessors had of these lands; which the LORDS sustained by way of reply to be proved, albeit it was not instantly produced; and found, that the pursuer needed not to produce his eldest right instantly, but that it might be instantly proved *cum processu*, and that the defender should not be urged to produce until it were proved; but being proved, they found that the defender should produce all other writs made to his predecessors of these lands, or else a right made to them anterior to that eldest right condescended on, and offered to be proved by the pursuer's reply.

Act. Hope.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 451. Durie, p. 18.

* * Haddington reports this case.

IN the improbation pursued mutually by the Earl of Kinghorn and Laird of Inchstuir, it was *alleged* by Inchstuir, That he could not be held to produce any older infestment of his lands held of the King, than the sasine produced by the Earl, pursuer, which was his title libelled, because the defender was infest upon a retour as heir to his father in his lands held of the King, long before the sasine produced. The pursuer *replied*, That his right proceeded from his forebears, who were lawfully infest holden of the King in the days of King Robert the Second; which reply was found relevant, albeit he had not so libelled, and declared that ratification should be granted of all Inchstuir's posterior infestments that should not be produced.

Haddington MS. p. 2607.

1662. December 20.

THOMAS DUNBAR of Muchrome against The VASSALS of the Barony of Muchrome.

THOMAS DUNBAR of Muchrome pursues reduction and improbation against the vassals of the barony of Muchrome, wherein all the terms being run, re-

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After the defender has made a production sufficient to exclude the pursuer, the pursuer is at liberty to produce older titles, *cum processu*, upon which he may crave certification, unless again excluded by a new production.

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It was sustained that the defender had produced

No 140.
sufficient to
exclude the
pursuer, and
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servicing defences, now, at the last term, it was *alleged* for Hay of Ariolland, no certification *contra non producta* against him, because he had produced a precept of *clare constat* from the pursuer's father as heir, to whom he pursues. *2do*, It was *alleged*, That he had produced sufficiently to exclude the pursuer's right produced, and so till his rights produced were discussed and taken away, there could be no certification *contra non producta*. The pursuer *answered* to the *first*, that the precept of *clare constat* was but in obedience of a precept out of the chancellery. As to the ancient rights produced, if the defender would rest thereon, he needed not stand that certification should be granted against any others not produced, seeing these produced are sufficient; but if the certification should be thus stopped, the effect of all improbations and non-entries should be marred by dropping in new writs from time to time, and still disputing thereon, and so dispute the reasons before the production were closed; at least the defender ought to allege, that the writs produced are sufficient, and declare he will make use of no further in this process.

THE LORDS repelled the first allegiance on the precept of *clare constat* being for obedience, but found the second allegiance relevant *hoc ordine*, and ordained the defender to condescend upon his rights by way of defence to the pursuer, to answer thereto presently.

Fol. Dic. v. 1. p. 450. Stair, v. 1. p. 151.

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Certification
*contra non pro-
ducta* was
stopped on
producing
and offering
to dispute
that the writs
produced ex-
cluded the re-
ducer.

1667. December 5. E. of LAUDERDALE *against* VASSALS of Musselburgh.

IN a reduction and improbation at the instance of the Earl of Lauderdale against the Vassals of Musselburgh, and in special, Major Biggar and others, heritors and possessors of the lands of Hill,

THE LORDS found, That the Major having produced a more eminent progress, and which he *alleged* would exclude the pursuer, no certification could be granted *contra non producta*; the defender not being obliged to shew any other writs, until those which are produced are discussed. The LORDS found also, That the defenders are not obliged to declare that they will use no other writs than those which are produced; the only difficulty being, that the reason of reduction could not be disputed, until the production be closed; and if the writs produced should be improven or reduced, the pursuer would be put to a new process of improbation, or return and crave certification after dispute *in causa*, which is incongruous in form.

THE LORDS were of opinion, that in the same process, the pursuer, after the discussing of the writs produced, might thereafter crave certification *contra non producta*.

Fol. Dic. v. 1. p. 451. Dirleton, No 113. p. 48.