

No 140.
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servings 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
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and offering
to dispute
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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.

* * * Stair reports the same case :

1667. December 7.

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THE Earl of Lauderdale and John Wauchop, macer, pursue a reduction and improbation of the rights of the lands of Hill, against Major Biggar, and crave certification *contra non producta*. The defender *alleged* no certification, because he had produced sufficient rights to exclude the pursuer's title, viz. in-fertments long prior to the pursuer's right. It was *answered*, That this could not stop the certification, unless the defender would declare he would make use of no other rights in this instance, otherwise the pursuers behoved to dispute with him upon every single writ he produced, and behoved to dispute the reasons of reduction with him before the production were closed. The pursuer answered that his allegiance, as it is proponed, was always sustained without declaring that he would make use of no more.

THE LORDS found the defences (as proponed) relevant, and ordained the Ordinary to hear the parties debate upon the rights produced, and if these should not prove sufficient, the LORDS thought that the defender might be forced at the next time to produce all he would make use of in this cause, that so the pursuers were not delayed upon disputing upon every single writ.

Fol. Dic. v. I. p. 451. Stair, v. I. p. 491.

1672. January 19. EARL OF QUEENSBERRY *against* M'GACHAN.

No 142.

IN an improbation pursued by Queensberry, it was *alleged* for one of the vassals, That no certification could be granted for non-production of any of the evidents of his lands, because he had produced a charter and sasine, and offered to prove, that his authors and predecessors had been in peaceable possession without interruption above 40 years. It was *replied*, That the allegiance ought to be repelled, because the pursuer's rights produced were more ancient than those produced for the defenders, which could not exclude his interest to crave certification against all writs posterior thereto, which were not produced.

THE LORDS did repel the defence *hoc loco*, and reserved the same to be proponed in the reduction, where it was only competent; and found, that no allegiance was competent against the certification but such as was found so, upon writs produced, which did elide the pursuer's interest.

Fol. Dic. v. I. p. 451. Gosford MS. No 444. p. 232.