

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

No 136.

certification once granted, could never be rescinded, but in some cases alle-
 narily, such as for not citation, or false citation of the defender to the action,
 improbation, fraud, or violence of the pursuer of the improbation, his having
 of the writs called for in his own hands, the obtaining of the decret during
 submission betwixt the parties, or the defender being absent *reipub.* or
 such particular causes. But upon a common allegiance *in facto*, such as was
 contained in this reason, the certification granted in an improbation could
 never be reduced, otherwise *nullus erit litium et falsitatum finis*. It was *an-*
swered, that Mr John Gordon could never be in *bona fide* to impugn or im-
 prove that writ which he had expressly ratified. In respect whereof, the LORDS
 found the reasons of reduction relevant, especially because it was alleged that
 certification granted in improbations had been retreated betwixt Diliston, tu-
 tor of Belchester, and William Home of Balita, and betwixt Esselmont and
 —.* Thereafter, Mr John Gordon *alleged*, That no respect should be had
 to this alleged ratification, because the same was evidently false *ex inspectione*,
 albeit the users thereof had kept it up while all the witnesses inserted and
 writer of the body were dead; which decease of the writer and witnesses in-
 serted being offered to be proved by the defender, the LORDS retreated their
 former interlocutor, and found the exception relevant against the reason of
 the summons of reduction.

Haddington, MS. No 2056.

1611. June 4. BISHOP of St Andrews *against* His VASSALS and SUB-VASSALS.

No 137.

IN an improbation pursued by the bishop of St Andrews against a number
 of his vassals and their sub-vassals, the LORDS would not grant certification
 against their sub-vassals, while the production of the vassals were first discussed,
 because they satisfied the production that takes away the bishop's interest
 against the sub-vassals; and if the vassals produce not, certification being
 granted against them, the sub-vassals will fall *in consequentiam*.

Fol. Dic. v. 1. p. 450. Haddington, MS. No 2191.

1618. July 1.

A. *against* B.

No 138.

IN improbations, a day being assigned to the party compearing to produce,
 and the production satisfied, the LORDS found _____ might propone
 an allegiance that some of the writs were in the pursuer's hand, or his
 predecessor's, he making faith, that he has just cause to propone the same.

Kerse, MS. fol. 206.

* Examine General List of Names.