

as to the defender's father's charter, it cannot exclude the pursuit, unless the defender were infeft, at least served heir to his father. *2do*, The pursuer produces his father and goodsire's infeftments, anterior to the defenders. The defender *duplicated*, That the common stile in all improbations and reductions, is a production of all rights made to the defender and his predecessors, to whom he may succeed *jure sanguinis*, and therefore the defender produceth sufficiently, viz. his father's charter, to whom he may succeed *jure sanguinis*, which is anterior to, and exclusive of the pursuer's infeftment. Neither is his reply relevant to force the defender to produce upon the production of his father or goodsire's infeftments, unless he were actually served heir to them; for his being apparent heir is no active title, though the defenders being apparent heir, is sufficient to exclude any farther production.

THE LORDS found the defender's father's infeftment being anterior to the pursuer's infeftment, did exclude certification, though the defender did not instruct himself heir to his father; but found the pursuer could not urge certification upon any of his predecessor's infeftments, unless he were served heir to them; and that he ought instantly to verify the same, being his active title, at least before any production; and would not sustain it to be proved that he was heir, by reply; and therefore assoilzied the defender *ab hac instantia*, upon the priority of his father's right to the pursuer's title produced.

*Fol. Dic. v. 1. p. 451. Stair, v. 2. p. 784.*

\*.\* See the sequel of this case, No 27. p. 5195, *voce* GROUNDS AND WARRANTS.

1682. February.

ROBERT DEANS *against* OSWALD.

No 145.

IN a reduction and improbation at the instance of a posterior against a prior appriser, the defender having produced his apprising, the pursuer craved certification *contra non producta*.

*Alleged* for the defender, No certification can be granted *contra non producta*, in respect the defender hath produced sufficiently to exclude the pursuer's title, viz a prior though unexpired apprising; just as a prior infeftment would the title of a posterior, although it might be more doubtful if his apprising could be obtruded against a postesior right of the lands by disposition and infeftment.

THE LORDS found there could be no certification *contra non producta*; but that they might reason on the production.

*Harcarse, (IMPROBATION AND REDUCTION.) No 525. p. 145.*

1696. February 7.

SIR DONALD BAIN of Tulloch *against* SIR ROBERT GORDON of Gordonston.

No 146.

IN a process between Sir Donald Bain of Tulloch and Sir Robert Gordon of Gordonston, for reduction and improbation of his rights on the lands of Ar-