

1676. *November.*

ANENT REDUCTIONS.

IN the reduction of a decret of an inferior judge, or of the Lords themselves, no certification will pass against the libel, executions, and minutes of process, (which are not presumed to be in the defender's own hands,) unless in the reduction the pursuer hath called the clerks of the court; only, this must be proponed as a *No process, in initio litis*. And if it be omitted, then a diligence or incident will be granted to the defender, against the clerk of that court to produce them.

Advocates' MS. No. 508, § 9, folio 266.

1676. *November.* LADY KIRKNESS *against* _____

WHERE a defender in an improbation produces an older right than the pursuer's title, in that case the defender needs not suffer the pursuer to get a certification *contra non producta*, because I will debate immediately why I am obliged to produce no more, and that the production made will exclude you; as was found in the case of Marshall's improbation against his vassals, where their rights proceeded and flowed from the Earl's father, and not from his brother, since the right whereupon he pursued his improbation was as assignee constituted to a comprising only led and deduced against his brother the last earl. Yet there is one case where even by a later right, I will force them to produce older rights, viz. where the pursuer is superior, (as Marshall was to some of the defenders,) for then he has right to call for their writs, to see their holding, and if they be under irritant resolute clauses. *Vide supra*, No. 400, June, 1673, Abotshall *against* F. Kinloch.

Advocates' MS. No. 508, § 10, folio 266.

1676. *November.* LADY KIRKNESS *against* _____

WHERE reduction is raised of a comprising that is assigned; if seaisne has followed on the comprising, either in the person of the cedent or assignee, and the author disponder be not called, then no process will be sustained in the reduction till he be called; (only some Lords are so lax as to allow him to be called *cum processu*, and grant an act and warrant for it;) but if it be only yet a personal right of a comprising that is assigned, and no infetment yet taken on it, then the author needs not to be cited. A defender in a reduction is obliged to produce no writs that he condescends to be *in publica custodia*, viz. the books of session, nor any save those that are particularly called for, or such against which there is a special reason libelled.

Thir two last were found in the improbation pursued by the *Lady Kirkness*, *relict of Mr Patrick Oliphant, Advocate, against sundry Creditors.*

Advocates' MS. No. 508, § 11 folio 266.