

No 42. ing upon these decreets, the estate was alike liable to them both, which seems to be founded in law as well as equity, yet it was otherways decided.

*Gosford, MS. p. 359.*

No 43.

In a reduction, the defender producing a right exclusive of the pursuer's right, this was found to stop certification.

1678. July 4.

CUTHBERT *against* LADY RATTAR.

ALEXANDER CUTHBERT having appraised the barony of Mey from Sinclair of Mey, pursues reduction and improbation against the Lady Rattar and others. The Lady produceth two other appraisings, and an infestment upon one of them, granted by the Bishop to Caithness, with Mey the common debtor's own infestment, held of the Bishop, and *allegeth*, No certification *contra non producta*, because she instantly verifies a right exclusive of the pursuer's title, who, though he have a prior apprising, yet hath unwarrantably taken infestment of the King, who is not immediate superior. It was *answered*, That the competition of rights was only proper at the discussing of the reasons of reduction.

THE LORDS sustained the defence, being exclusive of the pursuer's title, and instantly verified.

*Stair, v. 2. p. 627.*

1681. December 9.

JOHN MAXWELL of Spedoch *against* The EARL of QUEENSBERRY.

No 44.

IN a reduction pursued at the instance of John Maxwell of Spedoch against the Earl of Queensberry, of a decret recovered against the said John Maxwell, as representing Robert Maxwell his father, who was intromitter with certain terce lands belonging to his mother's husband Craik of Stewartoun, and upon which decret there was a comprising deduced, to which the Earl had right; the reason of reduction was minority and lesion, in so far as the decret bore that Robert was intromitter, whereas Robert was an infant at the time, and also that there were three years duty decerned after John was charged to enter heir to Robert. THE LORDS repelled the first reason, and found that the decret bearing that Robert's intromission was proved, they would not reconsider the depositions after so long a time, to the prejudice of the Earl of Queensberry, who was assignee to the comprising, and so a singular successor, but they restricted the comprising as to the years that the decret bears Robert's intromission.

*P. Falconer, No 7. p. 3.*