

No 88. *Replied* for the defender, James Loch's adjudication is not like a right false and feigned, or vitiated and lacerated, but is valid of itself, quarrelled only upon the deed of a third party, viz. payment made by Patrick Wood of the sums therein contained; which, not being objected by his representatives in the decret of constitution or adjudication, is not competent to be proponed by a third party deriving no right from Patrick Wood, nor yet a creditor to him. For, as his representatives might renounce any objection of payment, and acquiesce in the adjudication, the pursuer, who is an unconcerned third party, could not complain of being prejudiced in his interest by the said renunciation. As to the decision betwixt Johnston and Arnold, the objection was upon a mid-couple wanting in the progress of right, which was always sustained; and the practick 1675 is a circumstantiate case anent the improving of rights upon falsehood: And even in improbations, a general clause, calling for all writs granted to the defenders and their predecessors, is restricted to writs granted by the pursuer and his predecessors, or authors, whose right he produces.

THE LORDS repelled the allegiance of *jus tertii*; and found no necessity upon the pursuer to call Drylaw's heirs.

*Fol. Dic. v. 1. p. 138. Forbes, p. 289.*

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S E C T. XXI.

Citation in Processes of Mails and Duties and Removings.

No 89. 1612. February 22. JAMES SKENE *against* TENANTS of ———.

THE donatar to a ward calling the tenants of the ground to make payment to him of their mails and duties of the said lands, needs not to call their master; for, as a ward needs no declarator, so where the donatar calls for the mails and duties, he needs to know none but the actual possessors of the ground.

*Fol. Dic. v. 1. p. 140. Haddington, MS. No 2411.*

No 90. 1626. December 9. LO. BUCCLEUGH *against* TENANTS.

Tenants pursued to remove, and condescending on the infestment of another person as their

LORD BUCCLEUGH pursues removing against the tenants of Elliestone. The defenders *alleged* they were tenants to the Lady Bonitoun, who was infest in the lands, and she not warned. This allegiance was repelled, except the tenants would allege, that their master's right was confirmed by the King, being of