

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

Kirk-lands; for if it was not confirmed, it was a null infeftment, and so could not allege upon her infeftment, but was as if she were not infeft: And this was so found, albeit the tenants *duplied*, That they could not dispute upon the validity of their master's right, seeing they were only tenants, and she was not warned, who, if she had been warned, would have maintained her own right, which was not known to them, if it was confirmed or not; which was repelled.

Act. *Scot.*

Alt. ———.

Clerk, *Scot.**Fol. Dic. v. I. p. 140. Durie, p. 244.*

No 90.  
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King, being  
of kirk lands.

1627. *March 22.* LA. NITHISDALE *against* Her TENANTS.

IN a removing by the Lady Nithisdale against her Tenants, one Pollock *alleged*, that he was tenant to another who had a rental of the lands set during the lady's lifetime, and during the receiver's lifetime, who were both in life; and he who was rentaller not being warned, and who was his master, no process therefore ought to be granted against the excipient; and the pursuer *replying*, that, by the express condition of the rental, it was provided, that if the rentaller should put another in possession of the land, *hoc ipso* the rental should expire; and so seeing the excipient confessed his possession as tenant to the rentaller, the said rental could not furnish any exception; THE LORDS, notwithstanding of the reply, found no process, while the rentaller were called and warned, that he might dispute upon the force of his own rental, which could not be taken away except himself were called.

Act. *Douglas.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. I. p. 140. Durie, p. 293.*

No 91.  
A defender in  
a removing  
founded upon  
a tack from a  
rentaller who  
was not warn-  
ed. The pur-  
suer replied  
upon condi-  
tions in the  
rental by  
which it  
would appear  
to be expired.  
The Lords  
found no pro-  
cess till the  
rentaller was  
called.

1627. *July 26.* LADY BOYNE *against* Her TENANTS.

IN a removing pursued by the Lady Boyne against her tenants, it was found, she needed not warn her own son, the Laird of Boyne, apparent heir to his father, from whom the Lady's infeftment in conjunct fee or liferent proceeded; because a man is not obliged to warn his own author, or his apparent heir.

*Fol. Dic. v. I. p. 140. Spottiswood, (REMOVING) p. 283.*

No 92.

1627. *December 7.* L. BAMFF *against* His TENANTS.

IN a removing by L. Bamff against his Tenants, the LORDS found an exception relevant, proponed for the defenders, that they were tenants to one condescended upon, who was heritably infeft in the lands libelled, and who was not warn-

No 93.  
An exception  
sustained in a  
removing,  
that the de-  
fenders were  
tenants to a