

No 86.

their predecessors, to whom they may succeed *jure sanguinis*, because reductions and declarators are competent against apparent heirs, without any charge to enter heir; yet they are not competent to apparent heirs till they be actually entered. It was *answered*, That the pursuer being publicly infeft, has good interest to call for all writs that may burden the land, to the effect he may improve the same, as an impediment hindering his infeftment; but specially an appriser who has not his author's rights; and that this has been always the stile of the general clause in improbations.

THE LORDS found the defence relevant, and would grant certification against no writs, but such as were granted by persons whose infeftments and retours should be produced before extract.

The defender further *alleged*, no certification against any rights made by Thomas or John, Lords Kirkcudbright, to the defender, because no person was called to represent them; whereas it is known that George, Lord John's nephew, is both apparent heir-male and of line, and that this has been the common defence always sustained. The pursuer *answered*, that the only ground of this defence is, when defenders have warrandice from their authors; and therefore the pursuer ought to call their authors, that their rights inferring warrandice upon them may not be reduced, they not being heard; but here the defender produces no right from Lord John, or Lord Thomas, and so the allegiance is not relevant against the production; but only in case such rights be produced, it will be relevant, when the pursuer insists to reduce the writs produced.

THE LORDS repelled the defence, and reserved the same, if any right should be produced by the defender bearing warrandice.

Fol. Dic. v. I. p. 138. Stair, v. I. p. 755.

1684. November.

LORD ADVOCATE *against* LORD CARDROSS and LAIRD OF LIVINGSTON.

No 87.
Authors liable in warrandice, must be called.

IT being *alleged* by the defender in an improbation, that no certification could pass against writs granted by his authors, unless the authors immediate and mediate were called,

Answered for the pursuer, It is enough to call the immediate, who may intimate to the mediate authors, as they find themselves concerned.

Replied, The mediate authors ought also to be called, because they are liable in warrandice.

THE LORDS found, That all authors should be called by the pursuer, as they are condescended on by the defender, who is to give his oath of calumny, that the persons in the condescendence are authors, and liable in warrandice. And if the pursuer will not be at pains to cite old authors, he may pass from the rights made to or by them, and restrict the libel. Here was a condescendence

of near twenty mediate authors ; and this decision seems to render improbations tedious and chargeable to the pursuers,

No 87.

Fol. Dic. v. 1. p. 138. Harcarse, No 549. p. 152.

1708. December 18.

COLONEL JOHN ERSKINE of Carnock *against* SIR GEORGE HAMILTON.

No 88.

Found in conformity with No 86. P. 2223.

COLONEL ERSKINE having right to an apprising led by Duncan Lindsay against Sir John Blackader of Tulliallan, with a charter and sasine following thereon in August 1633, disposed by Lindsay's grandson, and heir to the Earl of Kincardine, the Colonel's author, in the year 1676, who was infest that same year upon a charter under the Great Seal ; the Colonel raised a reduction, improbation, and declarator, against Sir Robert Miln, and Sir George Hamilton his assignee, for reducing and extinguishing James Loch of Drylaw's adjudication against the heirs of Patrick Wood, to whom Duncan Lindsay disposed his apprising in May 1634, adjudging from them the said disposition, containing a procuratory of resignation, registered in the register of reversions, to which adjudication Sir George had right, upon this ground, That the bond, which was the ground of the said adjudication, was paid before the leading thereof.

Alleged for the defender, *imo*, It is *jus tertii* to the pursuer to quarrel James Loch's adjudication, upon the account of payments made by Patrick Wood, since the pursuer derives no right from Patrick Wood. *2do*, He could not reduce Loch's adjudication, without first calling his representatives to be heard for their interest ; seeing in all reductions the defender's authors must be called.

Answered for the pursuer, It can never be reckoned *jus tertii* to him to defend his real right to the lands of Tulliallan, against a null adjudication, more than against a right false and feigned. For though it might seem *jus tertii* for any to make an objection against a competing right, that doth not quite annul the same, when the objector derives no right from the granter of that he quarrels ; yet he, who hath a real right to any subject, has sufficient interest to impugn and except against a competing right manifestly null in law ; which is not properly alleging upon any person's right, but alleging that there is no such right, or debt in the field ; which it is even *pars judicis* to deny action upon *ex proprio motu*. THE LORDS, by a tract of decisions, have been in use to allow a person to object what seems not his immediate concern for annulling his antagonist's right, July 22. 1668, Johnston of Sheens *contra* Arnold, No 77. p. 958 ; July 16. 1675, Campbell and Riddoch *contra* Stuart, No 4. p. 54. *2do*, Drylaw's heirs need not to be called by the pursuer, seeing they are not only totally denuded in favours of the defender, whereby they have no direct interest, but are not liable so much as to warrant from their father's fact and deed, and so have no subsidiary interest.