

parent heir, who is served and retoured, which will be sustained, if he be infest before he insist in the action, and in the case of a pursuit at the instance of an executor decerned, which will be sustained, the confirmed testament being produced before extract, albeit the confirmed testament be absolutely necessary to make up the title. THE LORDS sustained the improbation, as also sustained the reduction, towards the production of all personal rights, such as backbonds and others, but refused to sustain process of any real rights.

*Sir P. Home, MS. v. 1. No 512.*

No 57.

1686. *March.*

The CHILDREN of BANGOR *against* DUKE and DUCHESS of HAMILTON.

No 58.

AN adjudication led by the Duke of Hamilton being quarrelled as null and informal by another adjudger, because, *imo*, There being a summons against the defunct's debtor's son, containing both a transferring of an act of count and reckoning against the father, and a charge to the son to enter heir, for payment of the debt libelled in the principal summons; and the son having renounced to be heir, the pursuer took out a decret *cognitionis causa* for payment, without extracting a distinct sentence of transference, as he ought to have done; *2do*, The decret was extracted upon a licence to pursue without confirming the debt, whereas the licence was conceived *excludendo sententiam*.

*Answered*; The diligence is formal, in so far as, *imo*, The same hath proceeded upon a sentence both in the transference and *cognitionis causa*; and the Lords use not to loose adjudications upon such a nicety; *2do*, It is only the interest of the Commissaries to quarrel the not confirming before extract; and the Duke could not confirm, not knowing if he would recover payment by the diligence; but, upon payment, he is content to confirm, and grant discharge.

THE LORDS would not annul the Duke's adjudication, but allowed the pursuer to debate against the debt and ground thereof, and sustained the adjudication only *in quantum* the debt adjudged for was not convelled, and declared it current and redeemable.

*Fol. Dic. v. 2. p. 307. Harcarse, (COMPRISINGS.) No 321. p. 79.*

1695. *January 24.*

KEITH *against* Mr JAMES CATHCART.

No 59.

MERSINGTON reported Alexander Keith *contra* Mr James Cathcart of Carbis-ton, in a reduction and improbation of the rights of a tenement. *Alleged*, Your title cannot force me to produce any real rights, because you are not infest on your adjudication. *Answered*, He has a charge against the superior, which is equivalent. THE LORDS found this title sufficient to force production in the im-

Found in a process of reduction and improbation, that an adjudication with a charge against the superior, was