

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, disponed 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 disponed 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.

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