

No. 55. for payment, whereupon the appriser was infeft, the debtor's heir served in general, though not infeft, was found entitled to pursue reduction, and force production of the appriser's real right; which differs widely from the case of a singular successor, to whom our law gives not the same indulgences as to the right of blood. *2do*, In the *second* quoted decision, the question was not, If a pursuer, not infeft, could force production of real rights? but only, If a naked charter, without sasine, could force production of any rights, even personal ones? which concerns not the present case. *3tio*, The *third* decision proceeds only with relation to personal rights, and where the pursuit was only in improbation on falsehood; nor is there any mention there of real rights completed by infeftment. *4to*, As to the *fourth*, it neither mentions rights real by infeftment, nor did there the lands hold of the King, but of a subject, whom the compriser had charged to infeft him, which put the compriser in the same case as if he had been actually infeft; besides, the comprising was on the apparent heir's own bond; so that, in this case, the Lords had likewise regard to the right of blood. And, *lastly*, it is noticed in the end of that decision, that the Lords would not admit certification against an apprising, if the infeftment thereupon were produced; so that this decision made directly against Sir Patrick; and this answer also serves to take off the above cited decision, Oswald *contra* Douglas and Deans; for there also the adjudger had charged the superior, whereby his right was real and complete; besides, that, even in that case, the Lords refused to force the production of real rights, but restricted the action to improbation.

Quadrupled for Sir Patrick: That a charge against the superior gives no real right, but is only useful in competitions, in case a superior should prefer one adjudger to any other; so that it is the adjudication, and not the charge, that gives the right to pursue such actions. *2do*, That there could be no charge against the superior in this case, because the lands hold of the Crown.

“The Lords found the pursuer's title not sufficient to call for production of heritable rights whereupon infeftment followed, unless the pursuer restricted his process to an improbation on falsehood.”

Act. Sc.

Alt. Sir Ja. Nasmith.

Clerk, Gibbon.

*Bruce, v. 2. No. 3. p. 3.*

1720. July. LORD STRATHNAVER *against* DUKE of DOUGLAS.

No. 56.

The heir of entail neglecting the deed of entail, and making up his title to the land as heir of line, having thereupon burdened the land with debts contrary to the terms of the entail, a process for disburdening the tailzied subject of these debts, at the instance of the next substitute against the representatives of the said heir of entail, was not sustained, without a service.—See APPENDIX.

*Ecl. Dic. v. 2. p. 473.*