

On the 13th July 1768, the Lords preferred the arresters to the assignees. [The interlocutor was general; but it would seem that the majority of the Court went, upon this, that the legal assignees had not followed furth their right.]

On the 22d November 1768, the Lords adhered.

*Act.* H. Dundas. *Alt.* R. M'Queen. *Reporter*, Pitfour.

*Diss.* Alemore, Kennet, Hailes, President.

1768. July 14. CAPTAIN WILLIAM LIVINGSTON *against* JAMES WARROCH.

JUS TERTII.

Neither party can plead on a Defect in the Right of the Common Author.

(*Faculty Collection*, IV. p. 313; *Dictionary*, 7847.)

COALSTON. Both parties derive right from Lady Callendar. Neither of them can object to the author's right. Had the objection been made by the heirs-male, it would have been good; but then the defence of prescription would have been as good. The party here cannot plead in the right of the heir-male without being liable to the same defence as he would have been. If the defender may object to Lady Callendar's right, by parity of reason he may object to a progress of 1000 years.

MONBODDO. If a person is in the course of usucapion, he may maintain his right against every one who is not *verus dominus*: it is therefore material to inquire into the right of Sir James Livingston and Lady Newton. If the fact is true, that the lands are not in the charter of adjudication, then the pursuer has not proved that he is the *verus dominus*, and the subject is still *in hæreditate jacente* of James Livingston.

AUCHINLECK. It is not competent for the defender to say, that James Livingston had no right himself, and therefore could not sell to me. How can he dispute the right of the person from whom he himself derives right?

PRESIDENT. I always understood it to be a fixed principle, that no one can object to his author's right.

On the 14th July the Lords found, That it is not competent for the defender, who derives right from James Livingston, heir of tailyie to the Countess of Callendar, to challenge the Countess's right, upon which his own depends; and remitted to the Ordinary to proceed accordingly.

*Act.* R. M'Queen. *Alt.* A. Lockhart. *Reporter*, Pitfour.

*Diss.* Monboddo.