No 55. 1680. *June* 23.

ALEXANDER ARBUTHNOT *against* The EARL of MARISHALL.

IN a reduction and improbation Alexander Arbuthnot of Knox against the Earl of Marishall, *alleged*, No process, because he hath not produced a full progress in his own and his author's person. *Answered*, It is sufficient, especially seeing the Earl hath several of their author's writs, and, by a back-bond, he is obliged to make them forthcoming. This being reported, 'the LORDS, 'in regard the pursuer's own charter (which is the warrant of his sasine) is 'now produced, sustain process as to any writs granted to the defender by 'the pursuer himself, or any to whom he may succeed *jure sanguinis*. But, 'if the pursuer insist for production of any writs granted by Colonel Hary 'Barclay, or Sir John Scot, they find the pursuer must produce his author's 'rights, and recover them either by an exhibition, or charge of horning, be-'fore the defenders can be holden to take a term to produce.'

Fol. Dic. v. 1. *p.* 444. *Fountainhall, v.* 1. *p.* 103.

No 56. Improbation sustained, on the title of an adjudication, with a charge to enter, without infeftment, against all having real rights to the lands, to make them produce them.

1681. *June* 24. OSWALD *against* DOUGLAS and DEANS.

JAMES OSWALD having adjudged the lands of Gogar from Alexander Douglas, pursues reduction and improbation of all right thereof against Robert Deans, and others. The defender *alleged* no process, because the pursuer is not infeft upon his adjudication, and so, having no real right, they are not obliged to produce to him their real rights of the lands in question, albeit he had charged the superior to enter him upon his adjudication, which, as a legal diligence, might prevent posterior rights, yet that makes the adjudication no real right, nor could the adjudger remove tenants thereupon, though, as a legal assignation, it might give him action for mails and duties; much less can he reduce or improve other mens real rights. It was *answered*, That the LORDS, by their recent decisions, have, in favour both of creditors and debtors, sustained apprisings and adjudications, without necessity of infeftment during the legal, which would add to the debtor's debt a year's rent; therefore, this adjudication might be a just ground to call for opposite rights, that, upon production thereof, the pursuer might know, whether there be advantage by his adjudication; but after production, if the pursuer shall insist in any reason of reduction, if the defenders produce real rights, they may exclude him.—THE LORDS sustained the process, as to improbation. See INFEFTMENT.

Fol. Dic. v. 1. *p.* 445. *Stair, v.* 2. *p.* 883.