

Removing against the tenants at the Instance of another adjudger, he being neither possessor nor called in the Removings, but only a Competing Creditor, who had no farther Interest than to get himself preferred 30 June 1708 Hule contra Ericie. It is not Tertij and not Competent to any to Defend his fee against non entry, upon the account of its being full by Real rights in the person of another from whom he derives no right in March 1629 Douglass and E. Hinds contra E. Lauderdale & L. Log. It is not Tertij for one in whose hand a writment was laid to alludge by way of Defence, that payment was made by the owner of the goods and gear arrested 21 Decemb. 1621 Hamilton contra D. Clarke. As for the Deutor in a bond to Receipt upon an Assignation thereof, it is not Tertij to him and a Decree thereon against him, being the payment was made, and suspension was deemed to pass without caution or Assignation, that an assignay might be made to dispute his right. 16 June 1668 Bruce contra E. Huxton.

But a person having a real right upon lands, was allowed to object against a Competing adjudication, that it was null for being laid upon a person paid in the order, albeit he was quarrelled the adjudication directed to the benefit from the person against whom it was laid 10 Decemb. 1708 E. Spence contra Hamilton. Because, tho' it might seem not Tertij to bring to Question an adjudication against a Competing right, that doth not quite hinder the party, when the Objector derives no right from the grantor of that he quarrels: tho' he was with a real right in any Subject, with sufficient Interest to support an Exception against a Competing right Manifestly null in form, which doth properly alludge upon any persons Interest, but alludging that there is no such right or Debt in the field, which it is even pars Juris to deny relation upon ex proprio Motu. Again, the vendor pursued for the titles of his lands upon a tack thereof set by the purchaser, had Interest to quarrel the tack and null for being set without Consent of the patron, albeit he had no right from the Patron; the Nullity not being founded Super jure Tertij, but in re ipsa. 19 Janu. 1669 E. Athole contra Robertson.

Persons are allowed in a Competition to object what seems not to be immediately concern for annulling or July 1668 Johnston contra Arnold or Improving 16 July 1675 Campbell and Kiddoch contra Stewart in order to get themselves preferred. And every right is held as made up, which should made up would found a preference. Because frustrat per plura &c. Therefore a lady who was preferable to all her husbands Creditors upon her Jointure lands, having consented to Assignments of Annual rent grant upon these lands, whereby the Annual renters in a ranking of the Creditors were satisfied and paid: The Lords found that in so far as the Creditors to whose right she consented did hinder her to draw her full provision out of the lands and the price thereof, she without the Circum of an Assignation from them, was preferable to the whole other Creditors to her right.

right she consented not, for the defect of her Assign provision, because of the priority of her Assignment 17 Feb. 1727 Sinclair of South Sea and other personal Creditors of Keith of Luedquharre contra Lady Luedquharre.

Persons may be Reported or hindered personally Exceptions from pleading the legal preference upon their own right or Diligence to those of others; and from quarrelling the right or Diligence of others in ordinary cases. 29 Feb. 1702 Infirmantibus. That a Creditor by Instrument was preferable to another having the first Legitime Assignment: In a pet the petition was within was first Legitimer, sic by his holograph after Decemb. 1701. Tho' the preferable on his Assignment to himself 28 June 1711. Infirmantibus. Huxton contra D. Clarke. In a pet the person who had granted some to one for money laid out by him at his dying was not preferable to another who had granted some to another the bond at laid upon the account of his own Assignation: sicut in contract, or sicut in re ipsa to the same. In a pet the person who was not himself or others Legitimer, but in a pet the person who was not the party of an obligation. 2 Decemb. 1702 Infirmantibus. Infirmantibus contra Huxton & Co. of Edinburgh. In a pet the person who was not the party of an obligation, was not allowed to quarrel the Assignment of another made in an Assignation at his dying, tho' he had a special privilege in the first instance, upon his being in a real right to quarrel the right, without his title to the last of which testimony 1712 E. Huxton contra Gillespie being laid upon him and Gillespie & Co. A pet the creditor at whose instance had Deutor and Deutor were necessary for the sake to the relaxation, he was not allowed to quarrel the same upon the account of any Nullity or Informality, but upon a plain party. 1712 E. 10 Feb. 1710 Wallace of Strathgalloway contra Creditors of Sped. A petition was not admitted by a petition Discretion in favour of the grantors & Deutor and Deutor, tho' the first petition was supported: In regard he as Deutor had for could not quarrel or dispute his fathers former Deu, but was liable to quarrel the same 21 Novemb. 1705 Gillespie contra Gillespie and Co.

In Competitions all persons who produce rights with upon a petition to the Lord obtain ordinarly Incident Diligence by learning and Caption against hevers of writs that may instruct their progress as high as they can. When many Competitors exist, whatever might afford a the relevant Reason of Reduction, is receivable as in a Reduction. And all parties being as in Judio petitorio, no privilege upon seven years possession is considered, which takes only place in Judio possessori. Stat. lib. 4 Fet. 35 513 & 15 vers. in these Competitions.