

and Keith, 25th July 1623, and 3d February 1624; and *ult.* March 1624, Sir John Carnegie.

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1625. July 5. The LAIRD of DRUMLANRIG *against* SCOT of BURNFOOT.

THE Laird of Drumlanrig, as heir to his umquhile father, and heritor, and infest as heir to his father, in certain lands, pursues an action of succeeding in the vice, and for removing, and for violent profits against Scot of Burnfoot, as succeeding in the vice of umquhile Scot of Burnfoot his father, against whom umquhile the Laird of Drumlanrig, father to the pursuer, and to whom he is heir, obtained decret of removing. The defender compearing, alleged this process ought not to be sustained at the pursuer's instance, as heir, against this defender, to produce removing against him, as succeeding in the vice of the defender's umquhile father, who was decerned to remove, by virtue of an old decret obtained at the pursuer's father's instance, except that sentence of removing had been transferred in the person of the pursuer, and also in the person of the defender. Which allegiance the Lords repelled, and sustained the order of this process, and found that there was no necessity to the pursuer to seek that decret of removing to be transferred in him *active*, to represent the person of the obtainer of that sentence; far less that it needed to be transferred in the person of the defender, seeing he was called as succeeding in his umquhile father's vice. And the Lords found that the pursuer, as heir to his father, obtainer of the sentence, and being so infest in the land, might, *hoc ordine*, pursue this action, without any other action of transferring of the sentence in him *active*. Which decision appears to disagree from the form kept of old.

This interlocutor was thereafter altered upon the 18th of March 1626. For then, that action being called, the Lords found, that the decret of removing ought to be transferred in the pursuer *active*, before he could pursue this action libelled, albeit he was both heir and heritor of the lands libelled; and so found no process, while the sentence was transferred *active*, but found no necessity to transfer it *passive*.

*Act.* Nicolson. *Alt.* Scot. Scot, *Clerk.* *Vid.* 10th March 1626, L. Carpringtoun.

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1625. July 5. A SON of the LAIRD of INNERWICK'S *against* JOHN SHAW.

IN an action of reduction of a bond and obligation of some money, made by a son of the L. of Innerwick's, pursued at the instance of these to whom he was interdicted, *against* John Shaw, burgess of Edinburgh, to whom the bond was given, upon a reason of the said debtor's interdiction, published before the granting of the obligation,—the Lords found, that an interdiction, voluntarily made by the person interdicted, without any necessity of a cause impulsive, or cognition and trial of any judge preceding the same, ought not so to exeem the

interdicted person, and liberate him at the hands of his creditors, but that his moveable goods may be poulded, and distrained for his debt: but this was done in respect of the tenor and express clause contained in this interdiction libelled, which had that end designed therein, *viz.* that he had interdicted himself to these friends, to the effect that he should not do any deed whereby his lands and heritages might be evicted from him, and he prejudged therein; by the which clause, his moveables, if any he had, was not exeemed, but were liable to his creditors. In this process, also, the Lords found that such interdictions ought not to exeem the person interdicted, from the execution of horning and caption, personally to be executed by his creditors against him; for, this being his own deed, he could not, by his own deed, done in his favours and by himself, exeem himself from caption; for that is to bind himself to himself, whereby the creditor cannot be hurt.

*Act.* Nicolson and Stuart. *Alt.* Hope. *Scot, Clerk.* *Vid.* 11th December 1622, H. Seaton; 20th December 1622, L. Glenurchie; 4th December 1623, Hay *against* Geichan; 29th July 1624, L. Collington.

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1625. July 8.

STALKER *against* NEMO.

IN a double poulding, betwixt Stalker and Nemo, the Lords found a decret *cognitionis causa*, recovered before the Lords for a debt owing by a defunct, wherein there was called certain defenders to represent the defunct as executors to him, at least universal intromittors,—to be null, because none of the defenders in that sentence compearéd, neither to defend or to renounce; and there was no probation adduced to verify the defenders either executors or intromittors, neither were they charged to enter heirs. Therefore the decret was found null.

*Act.* James King. *Alt.* Nicolson. Gibson, *Clerk.* *Vid.* 8th July 1623, Thomson *against* Edgar.

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1625. July 8. WILLIAM GRAY *against* WILLIAM BURGH.

AN action of registration was pursued, at the instance of William Gray *against* William Burgh, who was convened to hear an obligation registrat, which was made by his umquhile father, and was desired to have execution against him, as successor to his father, in the lands of Davidson, whereto he was provided by contract of marriage, after the making of the bond craved to be registrat *eo nomine* against him;—in the which action the Lords found, that, albeit the defender was only convened as successor to his father in the said particular lands, wherein he was infest by virtue of a contract of marriage, and so for a cause onerous, he being minor the time of the granting of the said infestment to him, and being but presently of the age of 21 years, and so *intra annos utiles*; and that he being personally present, renounced all benefit, which