

1662. *January.*ADAMSON *against* KER.

## No. 25.

Where a writ, being an instrument in a process, is the defender's evidence, and is in his custody, a pursuer who is a singular successor, is not bound to produce it.

In the declarator of redemption, pursued by Patrick Adamson against Mr. Mark Ker, it was found, there was no necessity to produce the reversion, being in a contract betwixt the defender and the Laird of Wolmet, and which contract was the defender's own evident, and the pursuer a singular successor to Wolmet, who notwithstanding did produce, the time of the order, and now does produce an attested double under the hands of two nottaries, the principal contract being in the hands of one of the Clerks of Session for the time, and which the pursuer could not command; and in an other process betwixt Wilkie and Thomson, the same was found, though there was not an attested double produced, the pursuer being a singular successor, and the defender having the reversion at his own hand.

*Gilmour, No. 31. p. 24.*

1663. *June 25.* JAMES HALYBURTON *against* LORD ROXBURGH.

## No. 26.

James Halyburton, as assignee constituted by his father, pursues the Earl of Roxburgh, for payment of a debt due to his father. The defender alleged no process, because the assignation was not intimated in the cedent's life, and so he was not denuded, but the sum remained *in bonis defunctis*, and behaved to be confirmed, especially, seeing this assignation is a general assignation, *omnium bonorum*, without condescending upon this or any other particular.

The Lords repelled the defence and found process.

*Stair, v. 1. p. 195.*

1663. *February 12.* LOCKIE *against* PATON.

## No. 27.

A wife and her friends permitted to raise reduction of a deed executed by her husband in prejudice of her contract of marriage, during his life.

Elizabeth Lockie, spouse to Dr. Paton, pursues a reduction of a disposition, granted by her husband, to certain persons, as prejudicial to her contract; in which contract there was a clause, declaring execution to pass at the instance of certain persons, who concur with this pursuit.

The Lords sustained the pursuit, though it was not for implement, but for reduction of a right, impeding the benefit of the contract, without concurrence of the husband, seeing the process was against a deed of the husband's, and he called *passive*.

*Stair, v. 1. p. 177.*