

1628. *March 21.*The LAIRD of LINHOUSE *against* the RELICT of ROBERT KINCAID.

No. 8.

Transference
of arrestment.

Robert Kincaid being addebted in certain sums to the Laird of Linhouse, there is arrested by the Laird of Linhouse, in the Treasurer of Edinburgh's hands, the sum of £.1200 owing by the town to Margaret Harriot, Robert Kincaid's spouse, and therefore belonging to him *jure mariti*. After the arrestment Robert dieth, and Linhouse intents summons against the Provost, &c. of Edinburgh, to make the arrested sum forthcoming, wherein was called the relict of Robert and his only daughter. Alledged by the relict, no process upon the summons now after Robert's death, till first the contract were transferred in some to represent Robert. Replied, That ought to be repelled, in respect he had convened the relict and the only child for their interest, who are the persons who in law should represent him; and further, Mr. Alexander Lockhart who was decerned executor dative to the defunct, concurs to the pursuit; likeas also he should concur to the giving of the town of Edinburgh a sufficient discharge; and therefore seeing all parties are put *in tuto*, and none having interest prejudged, the pursuer should not be put to multiply sentences unnecessarily. Next the exception is not competent to the relict, unless she would allege some right to the sum arrested. The Lords found the exception relevant.

*Spottiswood, p. 341.*1628. *July 17.* LORD YESTER *against* JOHN BANNATINE.

No. 9.

No necessity
to call the re-
bel in trans-
ference of a
process rela-
tive to his es-
cheat.

John Murray and John Bannatine (for my Lord Yester's behoof) both donatars to the Laird of Drumelzier's escheat, contested who should be preferred: Shortly after John Murray died, and my Lord Yester sought to have an act of interlocutor given in his favours against John Murray while he lived, transferred in his son David Murray. Alledged, all parties having interest were not called, viz. the Laird Drumelzier, for whose escheat they were striving. Answered, He needed not in this case, where he was only seeking one to represent the defunct, but after he had established the judgment so, then he behoved to call the rebel before he got process. The other contended, That this being a part of the process, and a special act therein, the rebel who was most concerned in the business, should have been called thereto. The Lords found there was no necessity to call the rebel in the transferring.

Spottiswood, p. 341.

* * Durie reports this case:

In a transferring of a declarator of the L. Drumelzier's liferent, at the instance of one Bannatine donatar thereto, wherein litiscontestation being made by the