

their instances against the other, can only have execution at his instance by whom it was registered, but not all the others; neither yet can it be transferred at his instance who did not register it; yet, of favour, the Lords did not cast the summons, but gave the pursuer leave to turn his conclusion, and ordained the defenders to see while that day eight days.

Spottiswood, p. 342.

1634. *March 26.* DUNBAR *against* PROVOST of ELGIN.

No. 14.

No. 15.

In an action against Magistrates for not taking a rebel, it is sufficient that the rebel's representatives be cited for their interest after his decease, without necessity of transferring the process against these representatives.

Fol. Dic. v. 2. p. 475. Durie.

* * This case is No. 30. p. 11701. *voce* PRISONER.

1637. *March 3.* L. CROSBIE *against* HUME.

The umquhile L. Crosbie having intented and pursued removing against Hume, and he dying *pendente lite*, his son, being served heir to him, craving this action to be transferred in him *active*, and it being alleged, that he could not seek transferring in himself, by virtue of this title produced, whereby he was only retoured general heir, seeing none could seek this transferring, nor prosecute that removing, but only he who was infest particularly in the lands libelled, for without a special sasine of these lands he could not desire any to be removed therefrom, and consequently none without such a special sasine, which might be a ground to insist in that removing, could seek transferring thereof,—the Lords repelled this allegation against the transferring, and reserved this to be proponed and discussed whenever this pursuer should insist in the process of removing:—Which I think a little uncouth, that a transferring of a process of removing should be granted to one not seised.

Act. Craig.

Alt. Belshes.

Clerk, Gibbon.

Durie, p. 835.

1666. *July 14.*

PATRICK KEITH *against* LAIRD LESMORE, TROUP, and Others.

Patrick Keith having right of wadset, granted by the Earl of Marischal, pursues a reduction against the Laird of Lesmore of a certain posterior right, granted by the Earl to him; which right was disposed to Muiresk, who was infest; and disponed to Troup, who is present heritor; who being all called, and litiscontestation made, and the cause concluded, at the advising thereof, it was alleged for Troup, That Muiresk was dead, and there could be no advising of the cause till some

No. 16.

Transference of a process of removing.

No. 17.

After conclusion of the cause in a reduction, found that it could not be advised till the representatives of

No. 17.

some of the authors, who died *pendente lite*, were called.

representing him were called; for as *in initio*, there could be no process against Troup, the present heritor, till Muiresk, his author, were called, so neither can there be any procedure now till some representing him be called. It was answered, The pursuer declares that he insists against Lesmore's right *principaliter*, against which only the reasons are sustained; and as for Muiresk and Troup's rights, they will fall *in consequentiam*.

The Lords found, That the process behoved to be transferred against Muiresk's apparent heir before it could be advised; for as the declaring that the pursuer insisted *principaliter* against the first right, would not have been relevant *ab initio*, seeing the law allows all mediate authors to be called, that they may defend the right, whether the reasons be libelled against their rights or their authors', which comes in the place of the old custom, of sisting process until the defender's warrant were called, and discussed, so every author has alike interest to object against the reasons, although libelled *principaliter* against the first author's right.

But the Lords declared, that seeing the defender made this unnecessary delay, they would be more favourable in drawing back the reduction, *ad litem motam, aut contestatam*.

Stair, v. 1. p. 396.

1666. November 24.

— against MILN.

No. 18.

Transference of an order for redeeming a wadset.

An order being used for redeeming a wadset, the executor creditor of the wadsetter pursued the person in whose hands the consignation was made for payment of the sum consigned; and in the process the user of the order was called, and decree was obtained; but before it was extracted he deceased; and there was debate upon the oath of the consignatar. The Lords found, That the user of the order being a person having interest, and called *ab initio*, nothing could be done until the process was transferred against some person representing him.

In the same process, it was argued amongst the Lords, Whether a sum being consigned upon an order of redemption, the user of the order may pass from it, and lift the sum without consent of the wadsetter? and it was remembered by some of the Lords, That upon an instrument of consignation process was sustained at the instance of the wadsetter against the depositar, in whose hands the sum due upon the wadset was consigned, for making the sum forthcoming; but in this case nothing was done.

It appeareth, that after consignation, *jus is quasitum* to the wadsetter; so that the sum, being consigned and sequestrated to his behoof, cannot be uplifted without his consent.—See WADSET.

Dirleton, No. 52. p. 12.

1668. November 26. MAITLAND against His VASSALS.

No. 19.

A father and son were cit-

There being an improbation pursued at the instance of Charles Maitland of Hatton against his vassals, whereof William Douglas, elder, of Over-Gogar, and