

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