

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

Page 156.

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.

Page 172.

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