

1625. July 6. MOWAT *against* M'LELLAN.

No 42.

IN an action of spuilziation of six kine, pursued by James Mowat, writer, against M'Leilan, it was *alleged*, That he cannot be heard to pursue that action, being a Member of the Session, and being pursued only by him as assignee made by that person, from whom the kine were alleged to have been spuilzied, and so not competent to have been pursued by a Member of the Session, being a bought plea, conform to the act of Parliament; the LORDS sustained this action at the assignee's instance, notwithstanding of the allegiance, and act of Parliament, in respect that there was never any action intended upon that spuilzie at the cedent's own instance; and that the pursuer was not made assignee to an action, but to the deed of spuilziation.

*Fol. Dic. v. 2. p. 23. Durie, p. 174.*

1635. July 30. RICHARDSON *against* SINCLAIR.

No 43.

A DECLARATOR being only executed, but never called, nor any process deduced thereupon, the LORDS found, that the buying of the right in question, by a Member of the College of Justice, was not buying of a litigious right, which came under the compass of the act of Parliament.

*Fol. Dic. v. 2. p. 23. Durie.*

\* \* \* This case is No 34. p. 3210. *voce* DEATH-BED.

1675. February 24. HUME *against* NISBET.

No 44.  
A Member of the College of Justice, as trustee for an apparent heir, having purchased a debt due by the defunct, and thereupon adjudged the estate; and after the process was at an end, having conveyed the adjudication to the apparent heir, retaining a

KATHARINE HUME, apparent heir to John Hume in the lands of Sheffield, being in hazard to enter heir to him, did employ Mr Archibald Nisbet, writer, to purchase an assignation of a sum due by her brother to Mr James Keith, which he procured for 500 merks, the sum principal and annual extending above 6000 merks, whereupon he adjudged from her the lands of Sheffield, and obtained decret for the bygone duties thereof, intromitted with by Mr Alexander Hume, and thereupon apprised his estate, and was infest in both; and, after all, he gave a back-bond in favours of the said Katharine, to denude himself in her favours, being satisfied of the 500 merks he paid to Mr James Keith, and of 500 merks he expended in the process and infestments, and retaining to himself a fourth part thereof. Being charged on this bond, he gave in a bill of suspension, whereupon the cause was appointed to be discussed; and alleged that he could not denude till he was satisfied, conform to the back-