

1625. *January 14.* LORD KILSYTH *against* ROBERT BALFOUR.

IN an action of double poinding, at the instance of the Lord Kilsyth, who was debtor to David Lennox in 500 merks, conform to his bond, for the which he was charged, at the instance of Robert Balfour, as assignee made thereto by the said David Lennox, and which assignation was intimated upon the 18th day of June 1623; and which charges were suspended by the Lord Kilsyth, upon double poinding, as being distressed therefor, on the one part, by the assignee, and as being distressed, on the second part, by John Abernethy in Glasgow, who had arrested the money in the Lord Kilsyth's hands, to be made forthcoming to him, for satisfying of a debt owing to Abernethy by Lennox, and that his arrestment was execute the same 18th June, 1623, which is the very day of Balfour's intimation of his assignation;—the Lords preferred the assignee to the arrester, because, the arrestment being made the said 18th June 1623, no further diligence was done by the arrester since then, whereas the assignee, upon his bond, assignation, and intimation, had raised charges of horning, and, being drawn in question, and desired to be discussed in this suspension and double poinding, he could no more exact diligence, the other party never having raised any charge or summons since then, to make the money furthcoming to him, upon his arrestment, which naked arrestment the Lords respected not.

*Act. per se.* Gibson, *Clerk.* *Vid.* 26th January 1625, Andrew Cowper; 28th January 1625, Lo. Kilsyth; 14th February 1623, L. Saltcoats.

*Page 156.*

---

1625. *January 15.* LEWIS STUART *against* MAIN and SMITH.

IN an action, betwixt Mr Lewis Stuart *against* Main and Smith,—the Lords found, that corns growing upon any ground, set by the master of the ground to a tenant, where the said corns, after the shearing, are transported off the ground whereon they grew, to another ground; are not hypothecated to the master for that year's farm, by any privilege or prerogative of prelation which might make the master to be preferred to any other creditor of that farmer, in case any other creditor do greater diligence by poinding, or arresting, or otherwise than the master of the ground doeth; but that, in such cases where the corns are off the ground whereon they grew, the master, for his farms, hath no privilege nor preference to another common creditor, except for so much as he may claim by any more timely and lawful diligence done by him than by another creditor, albeit the question be moved for that year's farms and corns of that same crop; for the prerogative granted to the master of the ground is only competent and sustained when the corns of that crop are standing upon the ground of the lands whereon they grew, and for the which the farms are addebted to the master.

*Act.* Craig. *Alt.* Stuart and Cheap. Gibson, *Clerk.*

This decision was immediately stayed, and no interlocutor passed thereupon, and that matter ended by submission; but the contrary is decided betwixt Hay

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