

1626. December 6.

WINRAM *against* EXECUTORS OF DANSKEN.

In a transferring of an action and summons, pursued by Robert Winram against the executors of Mr. Henry Dansken, which summons desired to be transferred, was privileged, because part thereof was referred to the defender's oath; and the defender being dead, the summons being desired to be transferred in his executor, against whom the pursuer was to verify the whole summons by writ; the Lords found, that summons could not be transferred, because the defender therein being dead, against whom the privileged summons was sustained, by reason it was referred to his oath, which otherwise being proved, would not have been so privileged; therefore the cause of that personal privilege ceasing by his death, the same could not militate in the pursuer's favour, to be transferred in the executors of that defender, against which executor, that summons with that privilege could not be prosecuted.

Act. Stuart.

Clerk, Scot.

Durie, p. 242.

No. 5.
Transference
in privileged
actions.

1627. January

26. DUKE OF LENNOX *against* SIR JAMES CLELAND.

Esme Duke of Lennox having convened Sir James Cleland as bound for John Dunlop his chamberlain in the west, the matter having come to litiscontestation, the Duke dieth. Afterwards his son James Duke of Lennox sought to have this action and act of litiscontestation transferred in his person *active*, as executor to amquhile Lodovick Duke of Lennox, his uncle, and also executor to his father Esme, and having license to pursue. The Lords would not sustain the action.

Spottiswood, p. 340.

No. 6.

1628. January 30.

The LAIRD OF LOCHINVAR *against* DRUMLANRIG.

The Laird of Lochinvar being obliged to pay 5000 merks to Drumlanrig for my Lord Harris' debt, brought in this sum to Edinburgh to be given to Drumlanrig. David Mitchel, another of my Lord Harris' creditors, arrests this sum in Lochinvar's hand before he delivered it to Drumlanrig; whereupon he consigned the money, and raised a suspension of double poinding. This suspension being reasoned, Drumlanrig got up the money, and gave his bond to make it forthcoming to any having best right thereafter. Not long after he craved to have his bond up again. The Lords found, that he behoved first, (because Lochinvar was dead) to make some body represent him before he could get process, and that he might make any body compear for the defunct's heir or executor and *subire litem*.

Spottiswood, p. 341.

No. 7.