

form ; and by that means likewise to force the other to perform. And to apply this to the present case, Billy, as assignee from Wetherburn, could pursue Ninewells to pay or assign his action against Wetherburn, *i. e.* against himself, who represents Wetherburn. Now, to assign the action, and to do the thing, is the same ; and, therefore, the bargain is considered as implemented on the part of Wetherburn : and for that reason Ninewells is liable to pay the money. Which the Lords found, *Dissent.* Arniston, who was of opinion that the obligation to dispone was no debt affecting the superiority.

1740. *November 18.* CAMPBELL *against* HEDDERWICK.

[Elch. No. 13, *D. Bed* ; C. Home, No. 158.]

THE case here was,—A man upon death-bed disposed his estate to his only daughter and heir, and substituted to her a stranger, to the exclusion of his next heir of line. The daughter entered into a contract of marriage, wherein she disposed to her husband the lands she got from her father, as having right by the disposition from him there narrated, and afterwards died before she was of age, and without leaving any issue. The next heir of line now brings an action for reduction of the father's disposition upon the head of death-bed,—and of the daughter's upon the head of minority and lesion. The Lords were of opinion that the reduction upon the head of death-bed was competent at the instance of the remoter heir, even though the immediate heir was institute, unless the immediate heir homologated the deed by some act of his. But in this case they found, That the daughter disposing, as having right from her father, was a homologation of the father's settlement, which was valid against the next heir, though done in minority. And here a doubt was started from the bench, How far she could have been reponed against such homologation herself ? and How far she could have insisted in a reduction of her father's settlement upon the head of death-bed, though she was first in the disposition ? Lord Elchies thought she could ; and quoted a late decision to that purpose. His reason was, That the daughter was injured by the substitution of a stranger, to the exclusion of her heir-at-law ; especially as during her minority she could make no alteration in the succession. Upon this arose another doubt, How far a minor could make a settlement of his heritage ?

1740. *December 20.* SIR JAMES CARNEGIE *against* ELSIC and TILQUHILLY.

[Elch. No. 2 and 5, *Member of Parliament.*]

THIS was an election affair, in which there were two principal questions :—1^{mo}, Whether head courts have a power to expunge where no alterations have happened in the circumstances.