

No. 20. defence, the matter being for payment of the same debt, upon a several passive title.

Stair, v. 2. p. 93.

1676. *January 20.* GORDON *against* LORD DUFFUS.

No. 21.
Transference was found to need no new enrolment, but to proceed with the principal cause as it was enrolled.

Mr. George Gordon having pursued the late Lord Duffus, he insists now in a transference against the now Lord Duffus, as heir to his father, and produces his retour. It was alleged for the Lord Duffus, No process in the transference, until it be enrolled and discussed, according to the book of enrolment. It was answered, That transference in wakening being but incident and accessory process, need not of new to be enrolled, but proceed with the principal cause, as it was enrolled before, which is ordinarily practised in wakenings; and the same reason is for transference, where the passive title is instantly verified.

The Lords sustained the allegiance, and found the process to proceed according to the enrolment in the principal cause, without a new enrolment of the transference.

Stair, v. 2. p. 403.

1676. *February 16.*
EARL of DUMFERMLING *against* The EARL of CALLENDER.

No. 22.
A father and his eldest son, who had right to an estate, under burden of debts, were called in a declaration, that the estate should be liable for a certain obligation. The father died. No necessity of transference against the father's representatives, altho' the son was a singular successor.

The Earl of Dumfermling, having right, by assignation, to the obligations contained in the contract of marriage betwixt the deceased Earl of Callender and his grandmother, in so far as the same is in favours of the Lady, pursued the said Earl of Callender for implement of the said obligations; and the Lord Almond, now Earl of Callender, as having got a right to the said Earl of Callender's estate, with the burden of his debts; and the said Earl in the *interim* having deceased; did insist against this Earl of Callender; for whom it was alleged, That the process ought to be transferred against some representing the said Earl of Callender, as heir of line, or otherwise; and though the pursuer's procurators declared they insisted only against Callender for a declarator, that the estate disposed to him should be affected with the foresaid obligation, it was urged for Callender, That the said Earl's heirs ought to be called, seeing the declarator against him, being a singular successor, that his lands should be affected, was only a subsidiary conclusion, and could not be sustained before the debt was constituted; and the debt could not be constituted, unless the pretended debtor, or some representing him, were called—

The Lords, notwithstanding, found process; and that there were no necessity of calling or transferring against the heirs of the debtor.

Act. *Sinclair, Bernie, &c.*

Alt. *Lockhart.*

Clerk, *Monro.*

In presentia.

Dirleton, No. 337. p. 161.