

was, being called to make him furthcoming, the debtor dying bastard; the creditor summoned of new the haver of the horse in his hands, to make the horse furthcoming, and the King's Treasurer and Advocate for their interest: Which order the Lords found sufficient, because he had affected the horse by arrestment before the bastard's death.

*Fol. Dic. v. 1. p. 58. Haddington, No 2179.*

No 104.

1616. February 18.

JAMES STIRLING *against* LADY AULDBARR'S TENANTS.

FOUND necessary to transfer a summons to make arrested farms furthcoming, in respect of the decease of the party summoned for his interest, notwithstanding litifcontestation was made against the principal party called, and all farther probation renounced. But yet they ordained the tenants, who were called for the farms arrested, to compear to give their oaths, and assigned a day for that effect, and declared they would not give sentence till the process was transferred.

*Kerse, (ARRESTMENT.) fol. 235.*

No 105.  
Found necessary to transfer a summons of furthcoming on account of the party's death, although litifcontestation had been made during his life, and the term for proving circumduced.

1624. January 14. LA. LANGTOUN *against* SIR JAMES DURHAM.

In summons of arrested goods, where litifcontestation is made, if the debtor who is called for his interest decease; THE LORDS find the process not transferable.

*Kerse, (ARRESTMENT.) fol. 235.*

No 106.

1624. February 26.

SPITTLE *against* SCOTT.

MR ALEXANDER SPITTLE having registrate a bond of 2000 merks, owing by Scott of Dryop, younger, to him, arrested certain goods and gear belonging to him in his father's hands, old Dryop. Afterwards, the young man being dead, he charged the father to make the arrested goods furthcoming, which was not sustained until he first transferred the decret in his heir's person.

*Fol. Dic. v. 1. p. 58. Spottiswood, (TRANSFERENCE.) p. 340.*

No 107.  
Even where the debt was liquid, transference required. See Somervel against Herriot, No 110. p. 781.

1623. July 8. THOMSON *against* EDGAR.

In a pursuit by one Thomson *contra* Edgar, for making arrested goods furthcoming as belonging to umquhile Clement Edgar, debtor to Thomson the pur-

No 108.  
Found necessary to have

## No 108.

a defender in the furthcoming called, *hoc nomine* to represent the deceaft debtor.

fuer, wherein a decret being produced, in which umquhile Clement Edgar was found his debtor, after the deceafe of the which debtor, it was transferred againft Edward Edgar, apparent heir, and brother and neareft of kin, to the faid umquhile Clement, *cognitionis caufa*, to the effect that the creditor thereof might have execution, not againft the brother, and apparent heir foresaid, by personal execution, but *contra bona defuncti*, who was his debtor: This decret being given before the LORDS, but the party abfent, was found null fummarily in this procefs. to make arrefted goods furthcoming, by way of exception, becaufe there fhould have been fome perfon called *hoc nomine*, to represent the debtor deceaft, viz. either as heir, or as charged to enter heir or executor, or renouncing to be heir or executor to the defunct; neither whereof being done, but only the apparent heir called, which was not enough, albeit called only *cognitionis caufa*; the LORDS. would not fustain the fentence, feeing in effect it was given without any party called, and without any defender to represent the debtor.

Aft. Cheap.

Alt. Nicolson.

Clerk, Gibson.

Durie, p. 71.

1626. June 15.

STIRLING against TENANTS.

## No 109.

In transferring the action, and calling the apparent heir, it is not neceffary that he be charged to enter.

JAMES STIRLING purfues the tenants of Old-bar, in whose hands the farms addebted by them to the Lady were arrefted; and the Lady being called for her interest, for making of the farms furthcoming to the purfuer, for fatisfying of a debt addebted to him by the Lady: Litiscontestation being made in the caufe, and the probation renounced, before the advifing the Lady dies; whereupon the LORDS found, that the procefs could not be advifed, until the fame fhould be transferred in fome perfon to represent the Lady, who was principal debtor; and therefore the transferring being raifed at the purfuer's instance againft her fon, who was convened only as apparent heir; and the defender *alleging*, That the procefs could not be transferred *hoc nomine* againft him, as apparent heir, feeing he was neither charged to enter heir, nor called as charged to enter heir, but only as apparent heir, which was not *nomen juris*: THE LORDS fustained the transferring againft the apparent heir, in refpect of the ftate of the procefs, which was concluded before the deceafe of the Lady; and that no execution was craved againft the Lady, or her heirs, but only upon the arreftment againft the tenants; and found no neceffity of a charge, nor any other title in the perfon of the defender: but adjudications are not fo fustained againft apparent heirs.

Aft. Hope.

Alt. ———

Clerk, Gibson.

Fol. Dic. v. 1. p. 58. Durie, p. 202.