

1629. July 2. PURVEYANCE *against* LAIRD OF CRAIGIE.

No. 9.

Tho' annual-rent be due after denunciation, it cannot be summarily charged for.

A creditor having denounced his debtor for payment of the sum contained in his obligation, and the debtor suspending, and consigning the sum, the creditor declared, that he charged for the annual-rent since the time his debtor was denounced rebel, termly to this term of payment of the principal sum, conform to the act of Parliament 1621. And the debtor contending that he could not be thus summarily charged therefore; the Lords found, that in this and the like cases no such summary charges could be used, by virtue of a declaration made by the party at the Bar, in a process of suspension of the principal sum, which was therein touched allenarly; but found, that the party ought to seek the same by some other ordinary pursuit founded upon the act of Parliament; but if particular charges had been raised upon this act of Parliament, as upon other acts of Parliament, and the party had been charged thereupon, it might be probably maintained, that *eo casu* the charges might have been sustained, without new pursuing therefore.

Alt. Lawtie.

Fol. Dic. v. 2. p. 404. Durie, p. 455.

1630. November 18. MR. JAMES KING *against* MR. JOHN HART.

No. 10.

The same subject.

By contract of marriage, Mr. John Hart was obliged to give to Mr. James King, with his daughter, 2000 merks, to be employed upon profit and annual-rent to both their uses. Mr. James charged Mr. John Hart, eldest son and heir to Mr. John, for payment of both principal and annual-rent of the said tocher. Alleged, That although he might charge for the principal sum, yet he could not for the annual-rent; because, by the contract, he was not obliged in payment of annual-rent so long as the principal remained unpaid; and therefore he should seek the annual-rent by way of action, and not *hoc ordine*. Replied, The tocher being destined to be employed upon annual-rent by the contract, the defender having retained it in his own hand, whereby he hindered the employment of it, must be thought to be obliged in the annual-rent as well as the principal the time he kept it, and so may be alike charged for it as the principal. The Lords found the allegiance relevant.

Fol. Dic. v. 2. p. 404. Spottiswood, p. 35.

* * Auchinleck reports this case :

Mr. James King, upon a registered contract of marriage betwixt him and John Hart, in the Canongate, wherein there is permitted to the said Mr. James the sum of 2000 merks, to be employed upon bond or annual-rent, to the behoof of the