

No. 11. found that the pursuer might take the same term, to prove his summons, whereby it might have effect if the defender renounced not, and if he renounced, that he might use sentence against him therein *cognitionis causa*.

Act. Craig.

Clerk, Gibson.

Durie, p. 464.

No. 12.

Transference of a decree of poinding the ground, to the executor of the obtainer.

1629. November 27. L. BALMANNO *against* OLIPHANT.

A decret of poinding of the ground for an annualrent, being desired to be transferred in the executor of the obtainer; in which transferring the heir of him, against whom the sentence of poinding was obtained, and also another heritor of the land, who had acquired the right thereof since that decret, but not from any of the defenders in that sentence, were called in this transferring; and this heritor alleging, that the transferring could not be sustained against him, seeing he was not a party in the first sentence, and therefore the transferring cannot be against him, which cannot be craved against any but those who were then called; which allegiance was repelled, and the action of transferring sustained, seeing he was called only for his interest, and nothing concluded personally against him, and that the transferring was craved *activè* the pursuer only.

Act. Mowat.

Clerk, Gibson.

Durie, p. 471.

1630. December.

HART *against* CHISHOLM.

No. 13.

Who must be the parties in the transference of a contract assigned?

Mr. Hart being made assignee by Davidson, who was assignee by Elliot to a contract, for the sum of 700 merks, addebted to the said Elliot by Chisholm, and to all that followed thereon, craving transferring in him as assignee foresaid of the said registered contract, and of an act of caution, found by the said Chisholm in a suspension of the charges raised by Elliot his creditor, upon the said contract *activè*; in which action of transferring, the cautioner was only summoned thereunto, and not the principal debtor, who was charged and had suspended; this action of transferring was sustained, albeit the principal party charged and contracter, and who suspended, was not summoned, but only the cautioner, in respect protestation was admitted against that suspension, whereby the suspension was not standing undiscussed; for as the principal creditor who was cedent, might after the protestation have charged the cautioner, and miskenned the principal, even so his assignee might seek transferring against the cautioner after protestation, and misken the principal.

Act. Prasens.

Alt. Burnet.

Clerk, Gibson.

Durie, p. 551.

No. 14.

1632. Nov. 27. SOMERVIL *against* The APPARENT HEIRS OF LORD SOMERVIL.

A decree-arbitral pronounced between these parties, (by which every one of them is decerned to do something to the other), being registered only at one of

their instances against the other, can only have execution at his instance by whom it was registered, but not all the others; neither yet can it be transferred at his instance who did not register it; yet, of favour, the Lords did not cast the summons, but gave the pursuer leave to turn his conclusion, and ordained the defenders to see while that day eight days.

*Spottiswood, p. 342.*

No. 14.

1634. *March 26.* DUNBAR *against* PROVOST OF ELGIN.

No. 15.

In an action against Magistrates for not taking a rebel, it is sufficient that the rebel's representatives be cited for their interest after his decease, without necessity of transferring the process against these representatives.

*Fol. Dic. v. 2. p. 475. Durie.*

\* \* This case is No. 30. p. 11701. *voce* PRISONER.

1637. *March 3.* L. CROSBIE *against* HUME.

No. 16.

The umquhile L. Crosbie having intented and pursued removing against Hume, and he dying *pendente lite*, his son, being served heir to him, craving this action to be transferred in him *active*, and it being alleged, that he could not seek transferring in himself, by virtue of this title produced, whereby he was only retoured general heir, seeing none could seek this transferring, nor prosecute that removing, but only he who was infest particularly in the lands libelled, for without a special sasine of these lands he could not desire any to be removed therefrom, and consequently none without such a special sasine, which might be a ground to insist in that removing, could seek transferring thereof,—the Lords repelled this allegation against the transferring, and reserved this to be proponed and discussed whenever this pursuer should insist in the process of removing:—Which I think a little uncouth, that a transferring of a process of removing should be granted to one not seised.

Transference of a process of removing.

*Act. Craig.*

*Alt. Belshes.*

*Clerk, Gibbon.*

*Durie, p. 835.*

1666. *July 14.*

PATRICK KEITH *against* LAIRD LESMORE, TROUP, and Others.

No. 17.

Patrick Keith having right of wadset, granted by the Earl of Marischal, pursues a reduction against the Laird of Lesmore of a certain posterior right, granted by the Earl to him; which right was disposed to Muiresk, who was infest; and disponed to Troup, who is present heritor; who being all called, and litiscontestation made, and the cause concluded, at the advising thereof, it was alleged for Troup, That Muiresk was dead, and there could be no advising of the cause till some

After conclusion of the cause in a reduction, found that it could not be advised till the representatives of