

1611. *January 17.* CARNOWAY *against* EWING.

No. 3.

A bond signed by initials cannot be registered in order to summary diligence, but must be made effectual by way of action.

A bond and discharge neither subscribed by the party, nor by notaries for him, but alleged marked by him with two letters for his name, forth of the country, in presence of witnesses subscribing, because the party could not write, and Scots notaries could not be had there; that obligation should not be registrated by compearance of a procurator upon the mandate contained in the bond, which the clerks should receive; but the same should be registrated by summons and citation of the party. A bond subscribed after that manner will not be sustained, nor give action, unless the user offer to approve the verity thereof by the witnesses inserted.

Fol. Dic. v. 2. p. 404. Haddington MS. No. 2096.

1624. *January 15.* LORD DRUMLANRIG *against* BAILIES of HAWICK.

No. 4.

Decree having been obtained against the Bailies of Hawick, succeeding Magistrates were found obliged to obey the same without other transference than letters of horning and summary charges.

Fol. Dic. v. 4. p. 404. Durie.

* * This case is No. 18. p. 2509. *voce* COMMUNITY.

1627. *March 16.* BRUCE *against* KING.

No. 5.

A contract being registered at the instance of one party, whether another party interested can proceed in summary diligence? See No. 6. & 15.

A contract being registrated at the instance of George Bruce, by way of action as heir to his father, against James King, advocate, who was the contractor with his said father on the one and other parts; and James King having raised letters upon that contract, for charging of the said George as heir foresaid to fulfil to him that which his umquhile father was obliged to him in the said contract; which being suspended by the said George upon this reason, viz. That albeit the contract was registrated at his instance, so that execution might pass thereon at his instance, against the said James; yet seeing it was not registrated at the said James's instance, he could not raise charges thereon, wanting a warrant of registration; and the said James contending that the said contract being once registrated, at the instance of any of the parties, thereby execution was also competent to the other party against him, at whose instance the registration was decerned, as if it had been registrated at the instance of both parties; the Lords found, that the charges raised by James King could not be sustained, the contract not being registrated at his instance, especially the registration being expedite not by

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umquhile George Bruce contractor, but by his son as heir to him, and the time of the registration thereof at his instance, this charger then not having desired (as the Lords found he might have done) that execution might also be used at his instance against the heir of the said other party, who sought the said registration; which being omitted, and so not having warrant for his charges, the Lords found the same could not be sustained.

No. 5.

Alt. *Herriot.*

Alt. *Bruce.*

Clerk, *Gibson*

Durie, p. 291.

1628. *January 29.* LORD WHITTINGHAME *against* SPENCE.

In a suspension at the instance of the Lord Whittinghame against Spence, the Lords found, That a party in whose favours some clause of a contract is conceived, albeit he be not contractor in that contract, may raise summary charges upon that clause, against the party obliged to fulfil the same to him, and that he needs not seek implement thereof by an action, or by seeking registration of the contract at his instance, but that charges may be raised thereupon summarily; which the Lords sustained, the contract being registered before, betwixt the principal parties contractors.

No. 6.

A party in whose favour a clause in a contract is conceived tho' he be not a contractor, may use summary diligence against the obligant.

Act. *Douglas.*

Alt. *Belshes.*

Fol. Dic. v. 2. p. 403. Durie.

1628. *February 6.* MR. JAMES HANNAY *against* RUTHERFORD.

A Minister having a glebe designed to him, may charge summarily the possessors to remove, which is a favour granted to them for their greater expedition; but yet if the possessors suspend, they will not be obliged to verify all *instanter*, as in ordinary suspensions, but they will get a term assigned them for that effect, as if they were pursued by way of action.

No. 7.

Fol Dic. v. 2. p. 403. Spottiswood, p. 324.

1628. *March 15.* LAIRD HALTOUN, Supplicant.

A bill was given in by the Laird of Haltoun, craving letters and charges of horning against the possessors of his house of Haltoun, for delivery of the same to him, seeing the Lady, liferentrix thereof, was deceased. These charges desired by the bill were granted summarily by charges of six days, and in case of failzie to denounce, without citation or cognation of the party's rights. See No. 1. & 2.

No. 8.

Fol. Dic. v. 2. p. 403. Durie, p. 363.