

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 obtain-er.

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. Prasers.

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