

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 allenary; 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

said Mr. James's spouse, and the heirs to be begotten betwixt them; this contract being transferred against Mr. John Hart, as heir to his father, Mr. James charges the said Mr. John Hart to fulfill the said contract, and declares, that he charges both for the principal sum and the annual-rents. The Lords will not sustain the charge for the annual-rent, because it was not clear, by the contract, that the annual-rent was due; but ordained the charger to pursue for the annual-rent by way of action.

No. 10.

*Auchinleck MS. p. 171.*

1630. December 1. The FEUERS of CHAPPELTOUN against The L. ERNOCK.

These feuers having acquired a right of some lands from ——— Marjoribanks of Ratho, to the which Ratho the L. Ernock was obliged to do certain deeds concerning these lands, and these pursuers having acquired Ratho's whole right of the lands, as singular successor to him in his right, pursues Ernock for registration of that bond; wherein the Lords found, That these singular successors could not pursue registration of the said bond, as their author might have done, but that they ought to intent an ordinary action for implement of the same, as accords, and not to seek so summary execution, by pursuit of registration, which the Lords would not sustain; but the pursuit was sustained at their instance as heirs to those persons to whom *per expressum* Ernock was obliged to do the deeds; for Ratho had feued these lands to the pursuers' predecessors for a feu-duty, and thereafter he had dispoed his superiority to Ernock, who then obliged himself to these feuers to discharge them and their successors of a part of the feu-duty for ever; and this bond was craved to be registered by the pursuers, as heirs to them to whom the bond was made.

No. 11.

A right summarily to enforce *facta prestanda*, found not to follow the lands into the person of a singular successor.

Act. Lawrie.

Alt. Robertson.

Clerk, Scot,

*Durie, p. 544.*

\* \* \* Auchinleck reports this case :

There was a contract passed betwixt the feuers of Chappeltoun and Robertson of Ernock, whereby the said Laird of Ernock was bound to relieve the said feuers, their heirs and assignees, of a certain duty addebted forth of the lands of Chappeltoun. Some of these feuers-contractors sold and dispoed their parts of the land to other persons; who, as successors, pursue Ernock to hear and see this contract registered against him at their instance as successors. It is alleged by the defender, That this contract could not be registered at their instance against him, seeing they were neither heirs nor assignees to the parties-contractors, but singular successors, and could not have the benefit of the said contract, by getting the same registered at their instance, whereby summary charges may be directed against him, but they must pursue him by way of action. The Lords ordained them to pursue by way of action, and refused registration.

*Auchinleck MS. p. 171.*