No 13.

denude the cedent of his real right, whereof he had then charter and fafine; but whereupon, at the time of the affignation, the cedent was not infeft, though thereafter he acquired charter and fafine, but then another comprifes; yet the affignee will be preferred to the comprifer, notwithftanding of the faid fubfequent charter after the affignation, and before the comprifing.

Act. *Hope* & *Lermonth*   Alt. *Lawtis* & *Oliphant.*   Clerk, *Hay.*

Durie, p. 230.

No 14.

1628. *November* 14.   CUMING *against* CUMING.

FOUND that an affigney cannot be paid of a part of the fums obliged for lands, till a bond given apart by the cedent, for ratifying of the alienation at his perfect age, be fulfilled.

Kerse, MS. fol. 54.

No 15.

1629. *July* 13.   HAMILTON *against* HAMILTON.

AN affignee to a contract, or bond, if he charge the other party to fulfil to him as affignee, his part of the faid contract, the defender may allege that the cedent muft fulfil his part firft, or at leaft *per simul & semel*; whilk the LORDS allow, for that contract whereunto the charger is made affignee; but if the cedent be obliged to the defender by another contract or bond, the affignee is not holden to anfwer to the fame.

Balmanno, MS. (ASSIGNATION.) *p.* 14.

No 16.
The extent of warrandice of an affigna-tion.

1632. *February* 4.   ALEXANDER MACKLONAQUHEN *against* GILES CARSAN.

Queritur. How far one is obliged to warrant the affignation of a bond, &c. made by himfelf to another; whether that it is truly owing by the debtor fimply, or that it is both owing, and that the debtor is refponfal. This was drawn in queftion betwixt thefe parties, but they agreed between themfelves. The law is clear, l. 4. et 5. ff. de Hered. et Act. Vend. Quod nomine debitoris venditio, venditor præftare non debet idoneum, et locupletem efle debitorem, nifi ita ac-tum fit nominatum, fed efle debitorem tantum, et nulla tutum exceptione pe-remptoria et perpetua; nam emptori nominis de periculo in fubftantia non in qualitate venditor tenetur.

Spottiswood, (ASSIGNATION.) *p.* 21