

No 305. kening cannot be raised at the assignee's instance, except the cedent be likewise convened therein, unless the assignee first transfer the action.

*Auchinleck, MS. p. 168.*

1629. December 18.

L. RENTON *against* RENTON.

No 306.

AN action being intended, and afterwards transferred in the heirs of the defenders principally called and deceased; and since the intending thereof, and after transferring, the principal cause being wakened, in the which wakening some other parties were called, who were neither parties in the principal cause, nor yet in the transferring, but were called for their interest, who having acquired right from the defenders after the intending of the cause; it was found that no process could be granted against them.

Act. *Craig.*

Alt. *Stuart.*

Clerk, *Hay.*

*Durie, p. 476.*

1671. July 1.

BRODIE of Lethim and the Laird of RICCARTON *against* The Lord KENMURE.

No 307.

A decree being stopped on a bill, found not to be recalled, but only the extracting forbore till the parties were heard on the grounds of their bill, and that tho' it lay over for several years, it needed not to be wakened.

BRODIE of Lethim, as having right from Riccarton, having several years ago obtained decret against the Tenants of the Mains of Kenmure, thereafter upon a motion for the Viscount of Kenmure, the decret was stopped, and now the pursuers desire out their decret. It was *alleged*, That the cause having lain over several years, must be wakened. It was *answered*, That there being a decret pronounced, there was no more process depending, and so needed not be wakened. It was *answered*, That a decret, though pronounced, not being conditional to a day, but being absolute, and thereafter stopped, in respect the stop takes off the decret, the process is *in statu quo prius*. It was *answered*, That the stop doth not recall the decret, but only hinders the extract thereof till the supplicant be further heard, and it is his part to insist in the bill, and that it would be of very evil consequence if stopped decreets were recalled, for then not only wakening would be necessary, but in case the parties should die, transference should be raised; and, seeing wakenings are not requisite in concluded causes, much less after sentence is pronounced.

THE LORDS found no necessity of wakening, but allowed the defender to propone what further he had to allege.

*Fol. Dic. v. 2. p. 202. Stair, v. 1. p. 746.*