

No 59.

40 years; since which Claud had made Mr William Brisbane assignee to his right, and infest him in it; yet Gavin Hamilton of Raploch was ordained to be answered, because his son had, before any right made by him to Brisbane, given a bond to his father, to suffer him to bruik during his lifetime, whereupon he had served inhibition before Brisbane's right.

Fol. Dic. v. 1. p. 542. Haddington, MS. No. 2317.

No 60.

1622. March 19.

NAPIER against LITHGOW.

IN a reversion pursued by Mr William Napier against one Lithgow and Wilkie, upon an inhibition, served by him against his tenant upon a contract, whereby Napier set to his tenant 32 acres of his lands, for payment of four chalders wheat and bear; the LORDS found, that the inhibition was a sufficient ground to reduce a wadset given to the tenant of a tenement, albeit there was nothing owing of the tack-duty the time of the alienation.

Fol. Dic. v. 1. p. 540. Haddington, MS. No. 2619.

No 61.

1665. January 12.

NEILSON & CALLANDER against ———.

A party pursued a transference on an old summons, on which inhibition had been used. Transference was refused; yet it was thought, a new summons in the same cause would be sufficient to make the inhibition effectual.

NEILSON and Lodovick Callander, her spouse, pursue a transference of an old summons, on which there was an inhibition used. It was *alleged*, That the executions of the first summons were new, and by ocular inspection false, and craved the pursuer might abide thereby, who refused; and so being without an execution on the first summons, but having an execution on the second, were null, the pursuer craved them to be transferred *in statu quo*, but prejudice to the defender in the cause to allege no process, because the first execution was wanting.

THE LORDS refused to transfer; but some were of opinion, that a new summons, *in eadem causa*, would be sufficient to make the inhibition effectual, being raised on the summons of registration of a bond; others thought, that, albeit the stile bear, that inhibitions were not granted, but upon sight of the summons executed; yet it was ordinary to give it on an unregistered bond, or a charge to enter heir executed, though there was neither decret nor dependence; and, therefore, though executions be put on to get these raised, yet they are not adhered to, but now used so, that this summons, though without execution, yet might be transferred, and thereon executions might be used, and thereby the inhibition stands valid, which was the more clear way; for, albeit a summons bear to cite to such a day next to come, and so ordinarily cannot be used, no citation being thereon within the year, yet the LORDS