

\* \* \* Spottiswood also reports this case :

No. 11.

Thomas Marjoribanks of Ratho was obliged to pay an annual-rent to divers persons, feuers of Chappeltoun ; and for the more sure payment thereof, he assigned to every one of them as much of their feu-duty which was due to himself as effeired to the quantity of the annual-rent owing to them by him. Thomas having dispoined Ratho to the Laird of Ernock, he made him renew the former contract to the feuers. After this, it fell out that some of the feuers sold their lands to others ; which singular successors sought, by way of action, to have Ernock's bond registered, whereby he was obliged to assign to the said feuers, their heirs, executors, and assignees, the foresaid feu-duty. The Lords would not sustain the action of registration at the singular successors' instances, to the end that they might have summary execution upon six days ; but ordained them to pursue by an ordinary action.

*Spottiswood, p. 273.*

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1630. December 9. GOODWIFE of PITLENCHIE, &c. *against* SHARP.

No. 12.

Mr. John Sharp, upon a registered contract betwixt him and umquhile Sir William, his brother, transferred against the said Sir William's sister, Goodwife of Pitlenchie, and her umquhile sister's bairns, children of Dunbar of Burgie, charges them, as heirs to Sir William, to fulfill the said contract, whereby the said Sir William and his heirs were obliged to resign his lands for a mutual tailzie to him and the said Mr. John ; and in special charges the heirs to serve themselves, and thereafter to resign, conform to the contract. They suspended, alleging, That, by the contract, they are not bound to infest themselves, but only to resign ; and therefore they must be pursued *via actionis*, and not summarily charged. The Lords suspend the charge, because they could not make valid resignation, till first they were infest themselves.

*Auchinleck MS. p. 172.*

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1631. March 19. CRICHTON *against* WALLACE.

No. 13.

David Crichton being infest in a land in Edinburgh, by right from umquhile Hamilton, his author, by progress, to which Hamilton, Marion Wallace gave a bond, obliging her to ratify his right ; which bond the said pursuer, as singular successor, desired to be registered at his instance against her. The Lords found, That the pursuer, as singular successor, could not pursue registration of this bond against the defender, so summarily by action of registration, and as heritor of the land,

by right flowing from that person to whom the bond was made ; but reserved to him his ordinary action, which he as successor *in rem* might *de jure* have thereon, either by pursuit for implement, or otherwise. No. 13.

Clerk, *Scot.*

*Durie, p. 584.*

\* \* Auchinleck reports this case :

A bond that is conceived in favours of heirs cannot be registered at the instance of a singular successor, but he must pursue by way of action for fulfilling of that bond.

*Auchinleck MS. p. 189.*

\* \* Spottiswood also reports this case :

Marion Wallace having given a bond of warrandice to Patrick Hamilton, for warranting of a disposition of a tenement of land in Edinburgh, made by her father to Patrick ; afterwards, David Crichton, to whom Patrick disposed the same tenement, sought to have this bond registered against the said Marion, as he who had succeeded to the right of the tenement, with all writs and evidents that belonged thereto ; yet the Lords would not sustain the action at his instance as singular successor only, without he had been assigned particularly to that bond.

*Spottiswood, p. 273.*

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1632. *January 21.* GRIERSON *against* GORDON.

No. 14.

A depository of a sum of redemption-money was summarily charged to exhibit the same. Found, That he not obeying, letters might be directed to denounce him, he not having suspended the first charge ; and this though the letters were only granted *incidenter* against him in an action of redemption wherein he was not called nor was a party.

*Fol. Dic. v. 2. p. 403. Durie.*

\* \* This case is No. 49. p. 10117. *voce* PERICULUM.

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1635. *January 15.* SHANKS *against* EISTONS.

No. 15.

In a suspension of charges raised by one Eiston, upon a contract of marriage, betwixt the suspender, James Shanks, on the one part, and umquhile Marion Wilson, on the other part, by the which contract he was obliged to infest his spouse, in her life-rent, of all lands and money to be conquered by him, and to

Summary diligence at the instance of a third party in whose favour a stipulation is conceived. See No. 5.