

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.

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.

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.

No. 15.

provide her lawfully thereto, and, after her decease, the one half thereof should pertain to his heirs, and the other half to Janet and Marion Eistons, daughters to the wife of a prior marriage; whereupon the said daughters, after their mother's decease, having caused register the said contract, by the compearance of a procurator for the husband surviving, and they having thereupon charged him to fulfil the contract, in the special heads condescended upon by them, anent the infesting of them in the half of a tenement of land conquered by him at the time of the said marriage; the Lords found, That this contract could not be registered after the wife's decease, in this manner, viz. by a procurator's consent for the husband, and consequently that such summary charges could not be raised thereupon, at the instance of those in whose favours the said clause of the contract was conceived, they being neither contractors nor subscribers of the contract, and the contract not being registered betwixt the parties who were direct contractors, in their own life-time, but only registered by this third party, after the decease of the wife; which was sustained, and the reason of suspension thereupon found relevant, notwithstanding that the contract was registered as said is.

Act. *Nairn*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 404. Durie, p. 742.*

1635. February 12.

BROWN against BINNIE.

No. 16.

Summary diligence cannot proceed, even at the instance of parties contractors and subscribers, where the principal party is dead.

By contract of marriage betwixt Robert Brown, on the one part, and Margaret Binnie, his future spouse, with consent of John and Alexander Binnies, her brethren, on the other part, the said Robert is obliged to employ the tocher to himself and his future spouse in life-rent, and to the heirs begotten betwixt them in fee, which failing, the one half to himself, and the other half to the said John and Alexander Binnies; which contract, after the decease of the wife, being registered, by consent of procurators, at the instance of the said John and Alexander Binnies, and the said Robert Brown charged thereupon to fulfil the same, and he suspending the said charges; the Lords found, That, seeing the principal party, viz. the wife, who, by the procuratory contained in the contract, gave warrant to the procurators to compear, and consent to the registration, was deceased before the registration thereof, that the same could not be so summarily registered, by the consent of procurators adhibited for the parties consenters; notwithstanding that it was alleged for them, That they were parties contractors, and had subscribed the contract, and so they might lawfully register the same, and seek execution thereupon; and that being the case, it was more than if there had been only a clause conceived in their favours, *quo casu* such summary registration could not have been sustained; but they being expressly contractors and subscribers, the case was far different; which allegiance was repelled, and, notwithstanding thereof, the Lords found, that the contract could not be so summarily registered, at the instance of the consenters, after the death of the principal party; but reserved to them their action