

said Mr. James's spouse, and the heirs to be begotten betwixt them; this contract being transferred against Mr. John Hart, as heir to his father, Mr. James charges the said Mr. John Hart to fulfill the said contract, and declares, that he charges both for the principal sum and the annual-rents. The Lords will not sustain the charge for the annual-rent, because it was not clear, by the contract, that the annual-rent was due; but ordained the charger to pursue for the annual-rent by way of action.

No. 10.

*Auchinleck MS. p. 171.*

1630. December 1. The FEUERS of CHAPPELTOUN against The L. ERNOCK.

These feuers having acquired a right of some lands from ——— Marjoribanks of Ratho, to the which Ratho the L. Ernock was obliged to do certain deeds concerning these lands, and these pursuers having acquired Ratho's whole right of the lands, as singular successor to him in his right, pursues Ernock for registration of that bond; wherein the Lords found, That these singular successors could not pursue registration of the said bond, as their author might have done, but that they ought to intent an ordinary action for implement of the same, as accords, and not to seek so summary execution, by pursuit of registration, which the Lords would not sustain; but the pursuit was sustained at their instance as heirs to those persons to whom *per expressum* Ernock was obliged to do the deeds; for Ratho had feued these lands to the pursuers' predecessors for a feu-duty, and thereafter he had dispoed his superiority to Ernock, who then obliged himself to these feuers to discharge them and their successors of a part of the feu-duty for ever; and this bond was craved to be registered by the pursuers, as heirs to them to whom the bond was made.

No. 11.

A right summarily to enforce *facta prestanda*, found not to follow the lands into the person of a singular successor.

Act. Lawrie.

Alt. Robertson.

Clerk, Scot,

*Durie, p. 544.*

\* \* \* Auchinleck reports this case :

There was a contract passed betwixt the feuers of Chappeltoun and Robertson of Ernock, whereby the said Laird of Ernock was bound to relieve the said feuers, their heirs and assignees, of a certain duty addebted forth of the lands of Chappeltoun. Some of these feuers-contractors sold and dispoed their parts of the land to other persons; who, as successors, pursue Ernock to hear and see this contract registered against him at their instance as successors. It is alleged by the defender, That this contract could not be registered at their instance against him, seeing they were neither heirs nor assignees to the parties-contractors, but singular successors, and could not have the benefit of the said contract, by getting the same registered at their instance, whereby summary charges may be directed against him, but they must pursue him by way of action. The Lords ordained them to pursue by way of action, and refused registration.

*Auchinleck MS. p. 171.*

\* \* \* 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.*

---

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.*

---

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,