

fore a conclusion of personal execution against the heritor was sustained at the assignee's instance, as well as real against the ground.

Fol. Dic. v. 1. p. 422. Durie.

No 6.

* * See this case, No 9. p. 570.

1629. February 21. SMITH against HENDERSON.

IN a reduction *ex capite inhibitionis* pursued by Thomas Smith against Gavin Henderson, the pursuer's title being assignation to a bond of 151 lib. whereupon the cedent had served inhibition; it was *alleged*, that his assignation gave him no interest, in respect he was assigned to the bond foresaid, hail heads and tenor thereof, with all that the cedent had or might have thereto; and that the inhibition *tanquam accessorium debebat sequi suum principale*. THE LORDS found that one being assigned to a bond was *eo ipso* assigned to all execution used by the cedent for recovery of the same, albeit there were no special mention thereof made in the assignation.

Fol. Dic. v. 1. p. 422. Spottiswood, (INHIBITION,) p. 177.

No 7.
Found in
conformity
with Blair a-
gainst Gray,
No 2. p. 6301.

1637. March 24. TULLIBARDEN against ROBISON.

PATRICK now Earl of Tullibarden, as having right by disposition of the lands of from umquhile William Earl of Tullibarden, pursues John Robison feuer of the said lands, for payment of the feu-duties contained in his infeftment, of the years since the decease of the said umquhile Earl William, his author; and the defender *alleging*, that no action could be sustained at the pursuer's instance, for payment of the said feu-duties, except it were libelled, and instructed, that the pursuer was infeft in the said lands, and superiority of the same; for whatever disposition and procuratory of resignation therein contained, were made in the pursuer's favours, yet without infeftment had followed thereupon, it cannot give action to the pursuer;—and the pursuer *answering*, that Sir Archibald Stuart of Fynnart, author of umquhile Earl William's right, stands yet infeft, who will concur with the pursuer, and none can quarrel this but the heirs of Earl William, and they cannot be heard, being obliged to warrant this disposition made to the pursuer; the LORDS repelled the allegiance, the pursuer finding caution to warrant the defender, anent the payment to be made to this pursuer, at all hands, and against all parties pretending interest thereto.

No 8.
A disposition
of lands, im-
plies convey-
ance of mails
and duties.

Act. ———

Alt. *Johnston.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 422. Durie, p. 842.