

No 91.
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 or obligation
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 because this
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in toto.

posterior to the inhibition, albeit the contract made relation to a former contract which buir the sum of merks, for the which James Black was obliged to infeft John Kello in an annualrent of 70 merks, which contract was anterior to the inhibition, fell within the compass of the inhibition ; and that because the first contract was of an annualrent whereupon nothing followed, neither charter nor sasine ; and the other contract, albeit it made relation thereto, and added 5 merks more, making in the whole contained in the alienation of the property, which could not cohere with the first contract of the annualrent, and also because the infeftment of property behoved either to stand or fall *in toto*, and could not subsist *pro parte*. *Item*, the LORDS reduced the infeftments *a tempore litis contestatæ tantum*.

Fol. Dic. v. 1. p. 474. Kerse, MS. fol. 60.

* * * Haddington reports this case.

HENRY OLIPHANT pursued Kelly and others for reduction of their infeftments of lands pertaining to one called Black, because they were all granted after his inhibition. It was *alleged* by Kelly, that, before Oliphant's inhibition, he had Black bound by contract to infeft him in an annualrent of fourscore merks redeemable upon seven hundred merks ; and therefore, he having a bond anterior to Oliphant's inhibition, it was lawful to Black to give him infeftment in satisfaction of his inhibition. It was *answered*, That if he had taken infeftment of an annualrent of fourscore merks for fulfilling of his contract preceding the inhibition, it had been lawful ; but because he received not the implement of his bond, according to the tenor thereof, but had taken an infeftment of the property of the land for greater sums, it could not subsist. In respect whereof, the LORDS repelled the allegiance, and reduced the defender's infeftments.

Haddington, MS. No 2553.

1617. *January 31.* STIRLING *against* TENANTS of Lethindy.

No 92.

IN an action of removing pursued by Patrick Stirling *contra* the Tenants of Lethindy upon a comprising, the LORDS found, an exception upon an infeftment of lands relevant, notwithstanding it was after the inhibition, because it was *replied*, that the infeftment was relative to a bond, whereby he was obliged to infeft the defender in an annualrent of 200 merks out of any of his lands, and that the lands disposed were only worth a chalder of victual.

Fol. Dic. v. 1. p. 474. Kerse, MS. fol. 60.