

this wadset should be declared satisfied *pro tanto*. It was *answered*, *imo*, *Contra singularem successorem*, a personal debt by way of retention or compensation, cannot take away a real infestment; which, without a valid renunciation or discharge, cannot so deaude the party infest, as that a singular successor may not acquire the right thereof. *Ido*, This ground of compensation is not liquid nor constant, seeing it depends upon an action of warrandice against Lugton's heirs.

THE LORDS repelled the allegiance, in respect of the first answer chiefly.

*Fol. Dic. v. 1. p. 164. Gilmour, No 33. p. 25.*

No 89.

1666. December. WILLIAM OLIPHANT *against* HAMILTON.

OLIPHANT pursuing a pointing of the ground upon an annualrent, it was *alleged* absolutor from the bygones before the pursuer's right, because his author was debtor to the defender in a liquid sum equivalent. It was *answered*, That the pursuer was singular successor, and no personal debt of his authors could infer compensation of a real right against him.

THE LORDS found, that the bygone annualrents were moveable and compensable with any liquid debt of the pursuer's authors.

*Fol. Dic. v. 1. p. 164. Stair, v. 1. p. 423.*

No 90.

The bygones of an infestment of annualrent are moveable, and therefore compensable by any liquid debt of the annualrenter, even against a singular successor in the annualrent right.

1675. June 18. LEYES *against* FORBES.

COMPENSATION may be proponed upon sums whereupon apprising is led: because apprising is but an accessory security, a *pignus*, and does not absorb the debt.

*Fol. Dic. v. 1. p. 164.*

No 91.

\* \* \* See The particulars, No 6. p. 286.

1675. November 12. HOME *against* HOME.

HOME of Plendergaist pursues Home of Linthill, as representing his father, for payment of a debt of his, which was assigned to Patrick Andrew; the pursuit was founded upon a ticket by Linthill's father, bearing, That he had received a bond of L. 1,200, payable to him for the behoof of John Home, within five weeks after the date; and having a cautioner, Linthill cannot produce the bond. The question is, Whether he should be liable for annualrent on this ground, that it was to be presumed, that the bond of L. 1,200 having a cautioner, did bear annualrent, which then was ordinarily insert in bonds.

No 92.

Compensation was not sustained upon a wadset, which contained a clause of requisition; because, until requisition, there was no debt.